

## Director-General of Licensing

### Decision Notice – Review of Delegate’s Decision

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<b>MATTER:</b>	Review of Delegate Decision –Grant of a liquor licence & gaming machine licence
<b>PROPOSED PREMISES:</b>	Ted D’Ambrosio Bar, Darwin Turf Club Dick Ward Drive Fannie Bay
<b>PROPOSED LICENSEE:</b>	Darwin Turf Club Incorporated
<b>APPLICANTS FOR REVIEW:</b>	Ms Janet Farnell & Mr Geoffrey Farnell
<b>LEGISLATION:</b>	<i>Liquor Act, Gaming Machine Act and Part 3 of the Licensing (Director-General) Act</i>
<b>DECISION OF:</b>	Director-General of Licensing
<b>DATE OF DECISION:</b>	07 March 2017

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### BACKGROUND

1. The background to this application is set out in detail in the decision of the delegate of the Director-General of Licensing (the Director-General) in a decision notice published on 23 December 2016. For the purpose of this review, the background may be summarised as follows; on 15 December 2015 the Darwin Turf Club Incorporated (DTC) submitted an application under the *Gaming Machine Act* (the GM Act) for a gaming machine licence and approval to operate 55 gaming machines. In pursuance of that application, on 1 February 2016 the DTC also applied for a club liquor licence under the *Liquor Act* as the DTC’s existing liquor licence authority does not allow it to hold a gaming machine licence.
2. The DTC proposed to excise an area located within the existing racecourse facilities and within the existing liquor licence area which currently operates as the Ted D’Ambrosio Bar. Under the proposal the DTC would hold a separate club liquor licence for the Ted D’Ambrosio Bar as well as a gaming machine licence with the premises trading as the Fannie Bay Racing and Sports Club. The DTC registered the business name Fannie Bay Racing and Sports Club on 18 January 2016. The DTC would continue to hold the existing on-licence liquor licence for the remainder of the licensed areas of the racecourse premises. The proposal also includes the creation of a new class of members whose membership entitlement would be limited to the entry to and use of the facilities offered in the Ted D’Ambrosio Bar, essentially a social member category.
3. Section 24(1)(d)(ii) of the GM Act provides that a body corporate that has applied for a club liquor licence may apply for a gaming machine licence. However, the legislative requirements for a liquor licence and gaming machine licence must be assessed separately due to the different legislative requirements.

4. In the initial application, the DTC sought a club liquor licence authorising the sale of liquor in the Ted D'Ambrosio Bar from 10 am to 2.00 am the following day, seven days per week and for authorisation to operate gaming machines during the same hours. The DTC also sought authorisation for the sale of take away liquor to members and bona fide guests of the club. Following receipt of a number of objections to the grant of the liquor licence and the gaming machine licence, the DTC amended its applications so as to reduce the trading hours applied for to 10.00 am to 11.59 pm Sunday to Wednesday and from 10.00 am to 2.00 am the following day from Thursday to Saturday. The DTC also advised that it was no longer pressing for the grant of the take away liquor component of the liquor licence.
5. On 23 December 2016 a delegate of the Director-General issued a decision notice granting a club liquor licence and a gaming machine licence, authorising the use of 55 gaming machines, to the DTC authorising it to trade in the sale of liquor as the Fannie Bay Racing and Sports Club from the Ted D'Ambrosio Bar premises.

## CURRENT SITUATION

6. On 24 January 2017 Ms Janet Farnell and Mr Geoffrey Farnell (the Applicants) sought a review of the delegate's decision pursuant to the *Licensing (Director-General) Act*. The Applicants reside close to the DTC premises and had previously lodged a formal objection to the grant of the club liquor licence and the gaming machine licence to the DTC. As such, the Applicants are affected persons for the purpose of the delegate's decision and thereby entitled, pursuant to section 11 of the *Licensing (Director-General) Act* to seek a review by the Director-General of the delegate's decision.
7. Section 11(2)(a) of the *Licensing (Director-General) Act* provides that an application for review of a delegate decision must be lodged within 28 days of the date of publication of that decision. In their application for review the Applicants acknowledged that the application for a review was lodged outside the stipulated time frame. Accordingly, the Applicants sought an extension of time within which to lodge the application on the grounds the delegate's decision was received immediately prior to the Christmas and New Year festive season. The Director-General determined to grant the extension of time within which to lodge the application for review of the delegate's decision.
8. The grounds on which the Applicants sought a review are summarised as follows:
  - a) *The grant of the liquor licence was made contrary to significant concerns raised by NT Police in respect of the likely increase in anti-social behaviour in the neighbourhood of the DTC influenced directly by the access to alcohol over a longer period of time than had previously been possible;*
  - b) *The Applicants still regard the trading hours proposed for the premises under the revised application to be excessive;*
  - c) *Whilst the DTC had voluntarily reduced the liquor trading hours and withdrawn the application for authorisation to sell take away liquor, the Applicants raise concerns the DTC may apply for amendments to the licence conditions in the future seeking extended trading hours and authorisation to sell take away liquor. The Applicants submitted that trading hours should be limited to 10.00 pm closure every day without exception and that trading beyond 10.00 pm will result in regular disturbances to nearby residents;*
  - d) *The grant of the liquor licence does not reconcile with Government policy of tackling alcohol related harm and, if the Government was serious about reducing alcohol related harm, then it would not allow for the longer trading hours sought by the DTC. Given the Government's recent announcement that it intends to review the Liquor Act it would be prudent to not proceed with any new applications for liquor licences until that review is completed;*

- e) *Neighbours of the DTC already endure alcohol related anti-social behaviour during the Darwin Cup Carnival and on major race days and the grant of a liquor licence with extended trading hours will exacerbate the disturbances to residents of the neighbourhood;*
  - f) *The response from the DTC to the objections that new liquor licence and gaming machines will not have the effect of drawing additional large crowds to the premises is disingenuous as the costs of the refurbishment and the purchase of the gaming machines would make the new arrangements commercially unsound without an increase in the number of persons using the facilities to gamble and consume alcohol;*
  - g) *The DTC's past record as a liquor licence is irrelevant as the proposed changes to the liquor licence and the introduction of gaming machines presents a different set of regulations and will result in a different type of clientele utilising the premises; and*
  - h) *The Applicants' main objection relates to the application for additional hours for the club liquor licence which will create more anti-social behaviour which will adversely affect the public safety and amenity of the residences adjacent to and nearby the racecourse.*
9. The Applicant's request for review states "We are writing to appeal the decision made on 23<sup>rd</sup> December 2016 to grant the Darwin Turf Club a Club Liquor Licence and granting their application for 55 gaming machines." However, apart from the objection to the extended trading hours, the Applicants' have made no further submissions as to why the application for a gaming machine licence should have been refused by the delegate.
  10. In the context of this review, I note the observation by the delegate that despite the different licensing regimes for the liquor licence application and the gaming machine application, both are extrinsically linked and should be considered together. I concur with that view for the simple reason that should the application for a club liquor licence be refused the gaming machine application must also be refused. Conversely, if the gaming machine licence application is refused the DTC is unlikely to proceed with the proposed redevelopment of the Ted D'Ambrosio Bar or the introduction of the social membership category.
  11. Part 3 of the *Licensing (Director-General) Act* provides for the review of delegate decisions by the Director-General. Section 14 of that Act provides that in conducting a review of a delegate decision, the Director-General must take into account any matter that the Act under which the delegate decision was made requires the Director-General to take into account in reviewing the decision. For the purpose of this review, the matters which must be taken into account are those prescribed by the *Liquor Act* in respect of the application for a club liquor licence and the matters prescribed by the *Gaming Machine Act* for the application for a club gaming machine licence.
  12. After reviewing the delegate's decision, the Director-General must affirm the decision, vary the decision or set aside the decision and substitute a new decision.

## REVIEW OF THE LIQUOR LICENCE APPLICATION

13. The DTC has been in existence for many years and has conducted its activities at the Fannie Bay Racecourse on Dick Ward Drive, Fannie Bay since 1955. The DTC became an incorporated association in 1958. It has held a liquor licence in various forms for the entirety of that period and has held an on-licence liquor licence in its current form since 1990. The DTC conducts approximately 40 thoroughbred race days per year culminating in the running of the Darwin Cup in August each year.
14. Mr Keith Stacy holds the position of Chief Executive Officer of the DTC and is the manager/nominee for the existing on-licence liquor licence. Mr Stacey is proposed as the manager/nominee for the club liquor licence should that be granted. Mr Stacey meets the eligibility criteria for a manager/nominee for a liquor licence. Mr Stacey, on behalf of the DTC has submitted an affidavit in accordance with section 26 of the *Liquor Act* attesting that only

the directors of the DTC are able to influence or affect any decision or action relating to the sale of liquor pursuant to the licence sought. The DTC has tenure over the premises on which it proposes to conduct business under the liquor licence sought by its application.

15. As noted above, the application for a club liquor licence in the name of DTC. relates to the proposed excision of the Ted D'Ambrosio Bar from the existing liquor licence area. The DTC has acknowledged that the prime purpose for obtaining a club liquor licence is to allow the DTC to sell liquor and conduct gaming machine activity in the Ted D'Ambrosio Bar area.
16. The initial application sought trading hours for the sale of liquor from 10.00 am until 2.00 pm the following day, seven days per week. That application also sought approval for the sale of take away liquor to members and bona fide guests. The DTC also sought approval, under section 119 of the *Liquor Act* for material alterations to the Ted D'Ambrosio Bar for the purpose of accommodating the gaming machines should the gaming machine licence application be successful.
17. As noted in the delegate's decision, in support of the application the DTC submits that the aims of the development proposal are to provide top quality amenities that enhance the racing experience for its members. The long term vision for the venue is the redevelopment of club facilities and creation of a new club with gaming machine activities for members. The DTC expects that the proposed changes to its business will expand and diversify its membership base by offering a range of services, facilities and membership types that are not currently available.
18. Notice of the applications, for the liquor licence and the gaming machine licence, were published in the NT News on 9 March 2016 and 11 March 2016 with the objection period expiring on 11 April 2016. During the objection period, 16 objections were lodged with Licensing NT in response to the advertisement relating to the liquor licence application. A number of the objections also opposed the grant of a gaming machine licence.

## OBJECTIONS TO THE LIQUOR APPLICATION

19. Assessed against the criteria set out in section 47F of the *Liquor Act*, 13 of the objections lodged were deemed to be valid. Submissions lodged on behalf of the Alcohol and Other Drugs Services, Department of Health and the City of Darwin were not styled as formal objections but rather as commentary on matters that the Director-General should take into account in assessing the liquor licence application.
20. The delegate's decision notice includes a comprehensive summary of each of the 13 valid objections lodged. Having reviewed each of those objections I am satisfied that the delegate has accurately identified the substantive of the submissions contained in the objections. For the purpose of this review I incorporate the delegate's summary of the valid objections as follows.

### Acting Superintendent Trevor Owen: NT Police

21. On 11 April 2016 Acting Superintendent Trevor Owen made objection on behalf of the Northern Territory Police. A member of the Police Force has standing under section 47F(3)(c) of the *Liquor Act* to lodge and objection to the grant of a liquor licence.
22. The Police objection states that the liquor licence application in its present form is not supported. A clear objection was made in relation to the proposed trading hours and information was provided in relation to the reported increase in alcohol-related harms between 10:00 pm and 2:00 am, including alcohol-attributed hospital presentations, antisocial behaviour, protective custody incidents and alcohol-related offending.
23. The submission noted that there was insufficient information provided in the application to comment on the take-away liquor component of the proposed licence however, it was noted

that increased alcohol availability, together with gambling facilities, are not likely to contribute to improved community amenity. Further, it is asserted by the Police objection that the social conditions and public safety within the region would most certainly be impacted by an increase in alcohol availability.

#### **Ms Mary Chalmers**

24. Ms Chalmers is the owner and resident of a home in Gilbert Street, Fannie Bay. On 1 April 2016 she advised that she objected broadly to the application but noted specific concerns in relation to the proposed extended trading hours and the addition of a take away component to the existing licence.
25. Ms Chalmers objected to the grant of a liquor licence on the basis that:
  - There were already five take-away outlets within a two kilometre radius of her home which she stated was excessive;
  - There were significant problems with anti-social behaviour within the same radius and in the immediate areas; and
  - There was likely to be an increase in violent and other alcohol-related crimes should the liquor licence be granted.
26. Ms Chalmers is resident of the relevant neighbourhood and is entitled to object to the grant of a liquor licence pursuant to section 47F(3)(a) of the *Liquor Act*. The objection was made on the ground that the grant of the licence would adversely affect the public safety and social conditions in the community, as provided for in section 47F(2)(b). Additionally, the submission relates to the perceived adverse effect to the amenity of the neighbourhood. The objection complies with the requirements of the *Liquor Act* and is therefore a valid objection.

#### **Ms Vanessa Johnson**

27. Ms Johnson is a resident of Crush Street, Fannie Bay. On 4 April 2016 she advised that she is a neighbour of the DTC and objected to the application stating '*we are a quiet neighbourhood, who already have to deal with the results of anti-social behaviour from the sale of alcohol in our area*'.
28. Ms Johnson's stated residence indicates that she is a person entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. Ms Johnson's concerns relate to anti-social behaviour in the neighbourhood and bring the objection within the provisions of section 47F(2)(a). The objection is compliant with the requirements of the *Liquor Act*.

#### **Mr Darryl Day and Mrs Cheryl Day**

29. Mr and Mrs Day are residents of May Street, Ludmilla. On 5 April 2016 they advised that they have lived in the Fannie Bay/Ludmilla area since 1993 and strongly object to the application on the following grounds:
  - The amenity of the neighbourhood will be disrupted given the change in activity within the DTC, including the profile of patrons attracted to gambling and access to takeaway alcohol adding to the large number of options for take-away alcohol in the area; and
  - The grant of the liquor licence will result in increased negative impacts on health, public safety and social well-being in the community.
30. Mr and Mrs Day stated in their submission that the amenity of the neighbourhood would be disrupted as increased foot traffic and vehicles taking the back streets after leaving extended sessions at the venue would be encouraged by additional gaming options.
31. It was also stated that there is a strong element of undesirable social disruption already evidenced in 'rough living' areas, social housing dysfunction and theft and damage to local

businesses in Parap, Fannie Bay and Ludmilla. It was contended that increasing the 'mix' of alcohol and gambling would add to the social disruption.

32. Mr and Mrs Day are residents of the affected neighbourhood and entitled to object to the grant of a liquor licence pursuant to section 47F(3)(a) of the *Liquor Act*. The objection was made on the ground that the grant of the licence will adversely affect the social conditions in the community as provided for in section 47F(2)(b). Additionally, the submission related in part to the potential adverse effect to the amenity of the neighbourhood. As a result the objection is valid.

#### **Mrs Janet Farnell and Mr Geoffrey Farnell**

33. Mr and Mrs Farnell are residents of Brown Street, Fannie Bay. In their objection dated 6 April 2016 they advised that they have lived in the Fannie Bay area since 1996 and that they object to both the liquor and gaming components of the applications.
34. Mr and Mrs Farnell stated in their submission that the grounds for objecting to the licences was based on the adverse impact it would have on the amenity of the neighbourhood, as well as the detrimental affect the grant of the licences would have on the public safety and social conditions of the community.
35. Mr and Mrs Farnell acknowledge that the DTC already holds a liquor licence and state, correctly, that the only reason for applying for a new licence was to allow for gaming machines and to make it possible to have a new type of social member. The submission also raised concern in relation to the likelihood of more patrons attending the premises due to the extended hours of operation and the addition of gaming machines.
36. Mr and Mrs Farnell commented on the close proximity of their home to the licensee's carpark and also on the noise disturbances emanating from the DTC premises and carpark, including from road-sweeping contractors and from people using the facilities for touch football. Objection to the take-away component of the application was made on the basis that increased rubbish in the area and anti-social behaviour was likely to result.
37. Mr and Mrs Farnell were entitled to object pursuant to section 47F(3)(a) of the *Liquor Act* as residents of the affected neighbourhood. The objection was made on the ground that the grant of the licence will adversely affect the social conditions in the community as provided for in section 47F(2)(b). Additionally, the submission related in part to the perceived adverse effect to the amenity of the neighbourhood pursuant to section 47F(2)(a). The objection is valid in accordance with the requirements of the *Liquor Act*.

#### **Ms Karen O'Dwyer**

38. Ms O'Dwyer is a resident of Hudson Fish Avenue, Parap. In her objection lodged on 8 April 2016 she objected to the proposed changes to the DTC liquor licence. Her submission made comment on her observations of the reduction in adverse social issues when other take-away outlets in the area closed down. She stated her concern that granting the application would increase the availability of alcohol in the area which would result in an increase in problems in the area. It was specifically noted that residents in the immediate area of the DTC are tolerant of special events and race days which are hosted at the DTC however, Ms O'Dwyer submits that residents should not have to endure increased hours of trade.
39. Ms O'Dwyer's is entitled to object pursuant to section 47F(3)(a) of the *Liquor Act* being a person residing in the relevant neighbourhood. Her reference to anti-social behaviour in the neighbourhood, which she attributes to the sale of alcohol in the area, and the possible consequent social harms bring the objection within the bounds of section 47F(2)(a). As a consequence the objection is valid.



### **Ms Robin McGillivray and Mr Peter Dostine**

40. On 10 April 2016 Ms McGillivray and Mr Dostine, who reside close to the DTC premises in Gilbert Street, lodged an objection to the application. The submission referred to problems in the area relating to roaming noisy drinkers as a result of other take-away outlets close by and asserted that there are already sufficient liquor outlets in the area.
41. Ms McGillivray and Mr Dostine reside in the affected neighbourhood and are people entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. The submission lacked detail however reference was made to anti-social behaviour in the neighbourhood which Ms McGillivray and Mr Dostine attributed to the sale of alcohol which arguably brings the objection within the provisions of section 47F(2)(a) of the *Liquor Act*. On balance, the objection is assessed as valid and in accordance with the requirements of the *Liquor Act*.

### **Ms Ingrid Nadjarian**

42. Ms Nadjarian is a resident of May Street, Ludmilla and stated that she had been a resident in the area for approximately 14 years. In her objection dated 10 April 2016 Ms Nadjarian indicated objection to the application for a gaming machine licence and the proposal for a take-away liquor licence.
43. Ms Nadjarian stated that she has experienced loss of amenity in the neighbourhood following race days at the premises and commented specifically on the rubbish and waste left on the ground following such events. She expressed the view that the problem was likely to increase should the applications be granted.
44. Ms Nadjarian's resides in the affected neighbourhood and is a person entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. Her reference to the loss of amenity in the neighbourhood as a result of the applications being granted brings the objection within the provisions of section 47F(2)(a) with the result the objection is valid.

### **Mr John Gilbert**

45. In his objection Mr Gilbert indicated objection to both the application for a gaming machine licence and the proposed liquor licence. Mr Gilbert specifically stated that the primary reason for making a submission was his objection to the late night liquor licence. He went on to state that he believed the club licence was intended to be conducted as a night-club licence.
46. Mr Gilbert stated that he has lived in Douglas Street, Parap, for over 23 years and over a much longer period in the general neighbourhood during which time he had witnessed the deterioration of public behaviour fuelled by the proliferation of alcohol during and after race meetings. He commented on car parking problems, the drunks with rowdy behaviour in the streets and noted particular objection to a liquor licence extending to 2:00 am which he suggests will increase raucous behaviour. Mr Gilbert also commented on the adverse effect of having cars and motorbikes coming and going throughout the night, the objectionable behaviour of drunks and the danger of traffic in narrow side streets, including blind corners.
47. Mr Gilbert stated the amenity of the residents in a quiet suburb would be greatly infringed upon. Mr Gilbert's residence indicates that he is a person entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. His objection relates to the potential loss of amenity in the neighbourhood as a result of the application being granted which brings the objection within the provisions of section 47F(2)(a). The objection complies with the requirements of the *Liquor Act* and is therefore a valid objection.

### Ms Lorraine Hodgson

48. Ms Hodgson is a resident of Worgan Street, Parap where she has lived since 1991. By correspondence dated 11 April 2016 Ms Hodgson indicated her objection to both the application for a gaming machine licence and the application for a club liquor licence.
49. Ms Hodgson stated in her submission that the current licencing hours are not utilised in any of the bars and she expressed the view that there was no identified need to remain open until 2:00 am that any increase to the liquor licence hours should only be to midnight but no later. She added that there is little access to public transport in the area and no taxi rank at the DTC premises. Ms Hodgson also submitted that the local area does not need consistent day to day late traffic and intoxicated people.
50. As a resident of the neighbourhood, Ms Hodgson is entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. Whilst her objection lacked specific detail, general reference was made to the potential for adverse impacts on the amenity of the neighbourhood. As a result the objection meets the criteria specified in the *Liquor Act* for a valid objection.

### Mr Peter Zeroni and Ms Giovanna Zeroni

51. Mr Zeroni resides in Parsons Street, Fannie Bay. In correspondence dated 11 April 2016 Mr Zeroni indicated objection to the application for gaming machines and the application for a club liquor licence with the objection also submitted on behalf of his mother, Ms Giovanna Zeroni, who also resides in the area.
52. With reference to the application for a liquor licence, Mr Zeroni referred to research which he stated was indicative of an increase in the incidences of public drunkenness, violence, other anti-social behaviours and reduced worker productivity as a result of liquor trading in the hours after midnight. He stated that the licence proposal was likely to result in a high number of drunken individuals exiting the premises after major events and that such situation would have an adverse effect on the amenity of the neighbourhood.
53. Mr Zeroni expressed concern in relation to the lack of detail provided in relation to the take-away component of the application and the basis on which a 'member' would be entitled to purchase take away liquor. He commented on the additional problems likely to be experienced in the neighbourhood such as drunk driving and anti-social behaviour stemming from drinkers and noted that a sufficient number of takeaway liquor licences already exist in the area.
54. Mr Zeroni's is a resident of the affected neighbourhood and is a person entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. His objection relates directly to the social conditions in the community, as referred to in section 47F(2)(b) and the loss of amenity in the neighbourhood as a result of the application being granted which also brings the objection within the provisions of section 47F(2)(a). The objection is valid assessed against the provisions of the *Liquor Act*.

### Ms Christine Free

55. Ms Free is a resident of Philip Street, Fannie Bay. On 10 April 2016 Ms Free lodged an objection to the application insofar as it relates to take away liquor sales. In her submission, Ms Free stated that in her view, the granting of the application would adversely affect the amenity of the neighbourhood and have an impact on the health, education, public safety and social conditions in the community. Specifically, Ms Free noted that she had witnessed drunken behaviour resulting in assaults, domestic violence, disturbance and criminal damage which involved offenders who were intoxicated.



56. Ms Free referred to the many alcohol dependent itinerants residing in the area close to the DTC premises which is the subject of the application and stated that she expected that an additional take-away liquor licence would adversely affect the community.
57. Further comment was made in relation to concerns about the nature of the proposed club membership and the dress standard to be imposed should the application be granted. It was noted that there has not been a significant increase in the population in the area so as to warrant the grant of another take away liquor licence.
58. Ms Free's residence indicates that she is a person entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. Her reference to the social conditions in the community and the likely loss of amenity in the neighbourhood as a result of the application being granted brings the objection within the provisions of both sections 47F(2)(a) and (b). The objection is valid assessed against the requirements of the *Liquor Act*.

### **Mr Alan Buckingham**

59. Mr Buckingham resides in Brown Street, Fannie Bay and expressed concern that the proposal for new licences will result in a significant change in the activities of the premises. He noted that it was of significant concern that there would be increased traffic, anti-social activities and crime. Mr Buckingham suggested that there ought to have been a public meeting in relation to the proposal.
60. He opined that if the application was granted, residents would need to upgrade security which would impose a financial burden on them and stated that the proposed liquor licence would cause increased loitering and drunkenness spilling out into the nearby residential areas.
61. Mr Buckingham's is a resident of the affected neighbourhood and is therefore entitled to object pursuant to section 47F(3)(a) of the *Liquor Act*. His objection relates to the social conditions in the community, as referred to in section 47F(2)(b) and the loss of amenity in the neighbourhood as a result of the application being granted which also brings the objection within the provisions of section 47F(2)(a). As a result, the objection is assessed as being valid.

## **STAKEHOLDER COMMENTS**

62. As per usual practice, key stakeholder agencies were invited to comment on the applications. The response from NT Police was in the form of a formal objection and is summarised above. Comments were also received from the Alcohol and Other Drugs Unit, Department of Health and from the City of Darwin.

### **Drug and Alcohol Policy Unit**

63. Ms Frances Pagdin, Director, Alcohol and Other Drugs Services Unit provided comment by way of a letter dated 21 March 2016 in which she advised that the Department of Health had no adverse comment in relation to the application for the grant of a club liquor licence. However, Ms Pagdin advised further that the Department could not support the take away liquor component of the application. Allowing that the DTC subsequently withdrew the application for authorisation to sell take away liquor Ms Pagdin's comments in that regard need not be considered further.

### **City of Darwin**

64. Ms Anna Malgorzewicz, General Manager, Community & Cultural Services, provided comment on behalf of City of Darwin by letter dated 23 March 2016. Ms Malgorzewicz noted that the DTC is a supervised and controlled venue and that, apart from race days, the Ted D'Ambrosio Bar is only accessible by members and bona fide guests. She states that council seeks assurance that the club liquor licence will not be transferred to another entity in the future and that access to the Ted D'Ambrosio Bar is restricted to members only. City of Darwin also

expressed concerns regarding the take away alcohol component of the application however those concerns no longer require consideration.

## APPLICANT'S RESPONSE TO OBJECTIONS TO THE LIQUOR LICENCE APPLICATION

65. On 10 June 2016 a response to the objections and submissions was submitted on behalf of the DTC. As noted above, after considering the objections the DTC withdrew its application for authorisation to sell take away liquor and reduced the trading hours sought to 11.59 pm closure from Sunday to Wednesday whilst retaining the application for trading until 2.00 am the following day from Thursday to Saturday.
66. The response noted that DTC and its predecessors have been conducting thoroughbred racing from the Fannie Bay Racecourse for over 60 years, including the operation of gambling activities and the sale of alcohol to patrons, without any significant issue being raised regarding the conduct of those activities. The response also emphasised that DTC has significant experience in activities that draw large crowds to the venue, particularly the annual Darwin Cup Carnival, which it submits are largely trouble free.
67. DTC also submits that it is required to operate under a regulatory scheme that is far more stringent than that applicable generally to incorporated associations that hold a liquor or gaming machine licence. As well as the *Liquor Act* and *Associations Act* the DTC is also required to comply with the *Racing and Betting Act* and the Australian Rules of Racing so far as gambling activities are concerned.
68. The DTC notes appropriately that the majority of the objections from nearby residents relate to concerns that redevelopment of the Ted D'Ambrosio Bar area coupled with the extended trading hours will result in adverse outcomes in respect of the social conditions and amenity of the neighbourhood. It is also noted that many of the objectors express concerns regarding the sale of take away liquor which no longer forms part of the DTC application. The DTC submits that under its current licence the Ted D'Ambrosio Bar is authorised to trade from 10.00 am to 10.00 pm seven days per week, and later for specific functions or activities. The DTC submits that the extended trading hours applied for will not result in drawing large crowds to the venue. It was also noted that the grant of a club liquor licence brings with it the requirement to limit access to the premises to members and bona fide guests.
69. So far as the control of alcohol related anti-social behaviour is concerned the DTC relies on its past record and the mitigation strategies it has adopted over many years, including for the management of large crowds during major events and race days. The response to the objections states that the DTC has not been the subject of any significant complaints by Police or Licensing NT over the many years during which it has held a liquor licence and that there is no cogent evidence suggesting that an extension of the trading hours will result in adverse impacts for the surrounding neighbourhood. The DTC submits that, as per current practices, it intends to only take advantage of the extended trading hours where it is commercially viable to do so.
70. In its submission, the DTC disputed the assumptions in the objections of nearby residents that the grant of a club liquor licence and gaming machine licence would in itself present an increased risk to public safety or the amenity of the neighbourhood. The DTC again relies on its past record over many years including its strong credentials in managing the service of alcohol and the offering of gambling activities for events attracting large crowds.
71. The DTC submission that it operates in a similar fashion to other incorporated sporting clubs and that it contributes significantly to the Darwin community both in economic returns and staff employment and through the operation of the Territory's major thoroughbred racing venue.

## ASSESSMENT OF THE LIQUOR APPLICATION

72. The DTC has provided sufficient evidence to satisfy the requirements set out in the *Liquor Act* for the grant of a club liquor licence. The DTC has also provided satisfactory evidence that it is financially sound and, given its current activities under the existing liquor licence, that it is an appropriate entity to hold a liquor licence. Mr Stacey has demonstrated that he is an appropriate person to be appointed as Manager/Nominee for a club liquor licensee should that be granted.
73. A number of the formal objections specifically opposed the authorisation for the sale of take away liquor. Objections in that regard no longer require consideration due to the withdrawal of that component of the application by the DTC.
74. It must be noted that this application attracted a significant number of formal objections, primarily from nearby residents who expressed concerns the grant of the application would result in increased anti-social behaviour and noise and other disturbances in the neighbourhood. The objections from residents living near the racecourse are acknowledged as genuinely held and the content of the objections is detailed above in some detail above. However, concerns of that nature are widespread throughout the Northern Territory in many instances where a new liquor licence is under consideration. If the potential for anti-social behaviour to occur near licensed premise was to be considered an absolute bar to any new licences being issued then the Director-General would be unable to comply with the objects of the *Liquor Act*, including facilitating a diversity of licensed premises and associated services for the benefit of the community as a whole.
75. In this instance I am not persuaded by the formal objections to refuse the application for the grant of a club liquor licence. In reaching that decision the objects of the *Liquor Act*, as prescribed by sections three and six, are taken into account. In considering the risk of harm that may arise from the grant of such a licence it is also necessary to consider the competing objectives of the public interest in the sale, provision, promotion and consumption of liquor and the facilitation of a diversity of licensed premises and associated services for the benefit of the community.
76. Section 28 of the *Liquor Act* mandates that an application for a liquor licence must be considered with reference to the particular matters set out in that section. In that regard, the DTC has provided evidence of its financial stability and its good reputation as a responsible licensee. It is accepted that the DTC has existed and operated at the Fannie Bay Racecourse for over 50 years and that alcohol and gambling activities have been conducted there throughout the period of the DTC's existence. The evidence and information available indicates that the DTC is an experienced liquor licensee with sound reputation and experience, particularly in the management gambling and the responsible service of alcohol for major events which attract large crowds.
77. The proposed premises from which the club liquor licence will trade in the sale of liquor for on-premises consumption is the Ted D'Ambrosio Bar. That area currently operates as a liquor licensed area under the current DTC licence and no issues arise as to the suitability of the premises for the purpose proposed. As is the case for thoroughbred racecourses in most Australian capital cities, the DTC premises are located in a residential setting and have done so for in excess of 50 years. Private dwellings abut the racecourse grounds of three sides with the closest residential area being Playford Street area. None of the liquor licensed areas of the DTC premises, including the Ted D'Ambrosio Bar, are in immediate proximity to the residential areas, being separated to varying degrees by the DTC carpark and the racecourse itself.
78. Having said that, it is apparent from the content of the objections that nearby residents are disturbed on occasions by noise and traffic issues associated with activities conducted by the DTC, in particular during major race days including the month long Darwin Cup Carnival.

Similar issues arise for all major sporting venues that are located within residential areas with the result that residents' quiet enjoyment of their properties may be disturbed by additional traffic and crowd behaviour when major events or functions are held. Such disturbances are an inevitable outcome of living in a mixed use suburban setting where residential and sporting activities co-exist.

79. In the case of the DTC, I am not convinced that the potential for residents to be disturbed by activities of the DTC or the conduct of its patrons is so great as to persuade me that the application for a liquor licence should be refused. The fact that the intention is to operate the Ted D'Ambrosio Bar under a club liquor licence provides the DTC with an additional avenue to control the behaviour of its patrons. Those patrons will be required to be members of the club and the club has an obligation under the *Associations Act* to maintain records of members' names and details. As distinct from commercial hotel premises, clubs such as the DTC have the ability to bar troublesome members from their premises, either temporarily or permanently. It is in the best interests of the DTC to exercise its rights in that regard to as to prevent future complaints from residents regarding excessive noise or alcohol fuelled anti-social behaviour.
80. As noted in the delegate's decision, the grant of the club liquor licence sought by the DTC will not result in an enlargement of the current licensed area. It is acknowledged however that the extended trading hours are likely to attract additional patrons to the premises at times other than when race meetings are being conducted. Without the additional patronage and the resultant increase in revenue the proposal to operate a gaming machine room will not be viable. Whilst that is clearly a major concern of a number of the objectors, the hours of trade sought by the DTC are not unusual or excessive in comparison to other major sporting facilities located in residential suburbs that hold a liquor licence.
81. The DTC has taken into account the concerns expressed by its neighbours through the objection process. In response to those concerns the DTC has abandoned its application for a take away liquor licence and reduced the hours of trade initially sought from Sundays to Wednesdays. The trading hours now sought are consistent with those applicable to the majority of major sporting venues. To limit the hours of trade to something less than the norm would inevitably put the DTC at a commercial disadvantage in terms of competing for patronage with other similarly operated sporting and community clubs in the Darwin area.
82. A number of the objectors have made submissions relating to existing anti-social alcohol related behaviour that occurs in the neighbourhood. There is no reason to doubt the veracity of those submissions however the problems cannot necessarily be attributed to the existence of the DTC liquor licence. There is an abundance of evidence and research indicating that the cause of the majority of alcohol fuelled anti-social behaviour arises from the uncontrolled consumption of take away alcohol in public places. The DTC does not currently sell take away alcohol and will not do so in the future should the club liquor licence be granted.
83. It is necessarily speculative to suggest that an extension of the trading hours for the Ted D'Ambrosio Bar will automatically result in an escalation of the already existing problems relating to anti-social behaviour. The fact that the DTC has held a liquor licence for many years without significant complaint from Police or regulatory authorities regarding its responsible service practices provides a clear indication that the DTC takes its responsibilities in that regard seriously and will continue to do so in the future.
84. I concur with the conclusion reached by the delegate in her assessment of the objections and I am not satisfied, on the evidence presented, that the grant of a club liquor licence in the present circumstances will have an adverse effect on public order or safety or that it would contribute to the negative impact of alcohol misuse in the community.
85. Taking those matters into account, I am satisfied that the premises are suitable for the intended purpose and further, I am satisfied that the grant of a licence in the terms sought by the DTC will not adversely impact on the community or its social harmony and wellbeing.

## GROUND'S FOR REVIEW OF THE DELEGATE'S DECISION:

86. The grounds on which the Applicants seek a review of the delegate's decision are summarised in paragraph 8 above. In respect of ground a), the objection by NT Police was appropriately considered and dealt with by the delegate. The Police submissions in respect of the sale of take away alcohol are no longer relevant to the determination of the application. The submissions relating to the requirement for additional Police resources to be allocated for major events held at the DTC is noted, as is the response from the DTC to the effect additional Police resources are regularly deployed for all major sporting and social functions held in Darwin including, for example, the AFL Grand Final, the annual Greek Glenti and the Darwin Cup. The potential impact on Police resourcing alone is not sufficient to warrant the refusal to grant the club liquor licence currently sought by the DTC.
87. Ground b) relating to the additional trading hours sought is addressed above in the consideration of the objections that referred to that issue.
88. In respect of ground c), any future application by the DTC to further extend its trading hours or to vary licence conditions so as to authorise the sale of take away liquor would be subject to the same scrutiny and public notification as was applied to this application. For any future application to vary the conditions of the liquor licence the DTC would be required to advertise the proposed variations and would be subject to the normal objection and assessment processes.
89. In respect of ground d), Government policy aimed at tackling alcohol related harm is well known to the Director-General and in the wider community, as is the recent announcement by Government regarding a review of components of the *Liquor Act*. The submission that the DTC application should be deferred until that review is complete misapprehends the independent role of the Director-General and the necessary consideration of Government policy. The Government has not placed a moratorium on the grant of liquor licences pending the outcome of its proposed review. Had it intended that to occur, the Government could have issued a policy statement to that effect or implemented legislative changes to bring that about. To date the Government has not done so and the Director-General is obliged to consider the application in a timely fashion and in accordance with the legislation as it currently stands.
90. Grounds e), f) and h) of the application for review are addressed above under consideration of the objections.
91. In respect of ground g), it is not correct that the DTC's past record as a liquor licence holder is irrelevant in considering the proposed changes to the liquor licence and the introduction of gaming machines. As noted elsewhere in this Decision Notice, the DTC has enjoyed a good reputation as a responsible provider of gambling and liquor services over its extensive history spanning in excess of 50 years at the current venue. It is inevitable given the location of the racecourse and the fact that it conducts major racing events at the venue that there will be occasions when nearby residents will be disturbed or inconvenienced to some extent. However, given the DTC's long history of dealing with issues of that nature it is anticipated that it will continue to implement strategies and procedure aimed at minimising the adverse impacts of its activities on the wider neighbourhood.
92. In balancing the competing interests, the genuine nature of the submissions of the objectors is acknowledged, as are the concerns expressed regarding the potential for an increase in anti-social behaviour that already occurs in the neighbourhood. In determining an application of this nature the objects of the *Liquor Act*, as prescribed by sections three and six, must be taken into account. In considering the risk of harm that may arise from the grant of such a licence and the extension of the trading hours it is also necessary to consider the competing objectives of the public interest in the sale, provision, promotion and consumption of liquor

and the facilitation of a diversity of licensed premises and associated services for the benefit of the community.

93. In this instance, and on the basis of the reasons set out above, I am not persuaded by the formal objections, or by the grounds submitted by the Applicant's in their request for a review of the delegate's decision, to refuse the application for the grant of a club liquor licence.

## REVIEW OF THE GAMING MACHINE LICENCE APPLICATION

94. In conjunction with the application for a club liquor licence, the DTC has also applied for a gaming machine licence and authority to operate 55 gaming machines, the maximum number allowable for the holder of a club liquor licence. Pursuant to section 24(1)(d)(ii) of the GM Act an entity that has applied for a club liquor licence may apply for a gaming machine licence. The Director-General is required to consider such applications in accordance with the matters prescribed by Part 3, Division 2 of the GM Act.
95. DTC has paid the application fee and the prescribed levy. As required by the GM Act, the application was accompanied by a Community Impact Analysis (CIA) prepared in this case by Dickson Wohlsen Pty Ltd, trading as DWS Hospitality Specialists, for the DTC. The application for a gaming machine licence was advertised via publication of a notice in the NT News on 11 March 2016.

## ASSESSMENT OF THE GAMING MACHINE APPLICATION

96. When determining this application, the Director-General must have regard to relevant provisions of the GM Act and Regulations, including but not limited to the statutory objects of the Act which are:
- (a) *to promote probity and integrity in gaming;*
  - (b) *to maintain the probity and integrity of persons engaged in gaming in the Territory;*
  - (c) *to promote fairness, integrity and efficiency in the operations of persons engaged in gaming in the Territory;*
  - (d) *to reduce any adverse social impact of gaming; and*
  - (e) *to promote a balanced contribution by the gaming industry to general community benefit and amenity.*
97. Additionally, section 25(3) of the Act prescribes the matters that the Director-General must consider when determining an application for a gaming machine licence. Relevant to this application those matters are:
- (a) *the suitability of the premises to which the application relates having regard to the size, layout and facilities of the premises;*
  - (b) *the suitability of the premises to which the application relates having regard to the primary activity conducted at the premises;*
  - (c) *the suitability of the location to which the application relates having regard to the population of the local area, the proximity of the premises to other gaming venues and the proximity of the premises to sensitive areas such as schools, shopping centres, other community congregation facilities, welfare agencies, banks and pawn brokers;*
  - (d) *the appropriateness of problem gambling risk management and responsible gambling strategies;*
  - (e) *economic impact of the proposal including contribution to the community, employment creation and significance or reliance of the venue to or on tourism;*
  - (g) *if the applicant is a body corporate – the business reputation and financial stability of the*

*body corporate and the general reputation and character of the secretary and executive officers of the body corporate;*

- (i) whether the applicant is a fit and proper person to hold a licence;*
- (j) if a person is referred to in the affidavit under section 44 – whether that person is a fit and proper person to be an associate of a licensee;*
- (k) if the Director-General considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee; and*
- (l) any other matter that the Director-General considers necessary.*

98. In respect of the application for a gaming machine licence by the DTC, section 25(13) of the Act sets out the matters the Director-General must take into account in determining the number of gaming machines authorised for use under a licence as follows:

- (a) the number of gaming machines sought in the application made under section 24;*
- (c) the hours and days when the premises are open for the sale of liquor;*
- (e) the size, layout and facilities of the premises to which the application relates;*
- (f) the size and layout of the proposed gaming machine areas;*
- (g) the anticipated level of gaming on the premises; and*
- (h) such other matters as the Director-General considers are relevant.*

99. In support of the gaming machine application the DTC submitted that one of the aims of establishing a gaming machine room at the venue is to assist in the diversification of income streams and reducing the significant reliance on income derived directly from the conduct of thoroughbred racing. The DTC also submits that the grant of a gaming machine licence will enable the DTC to compete on an equal footing with similar sporting facilities that currently offer gaming machines for the use and enjoyment of their members.

100. Having reviewed the constitution for the DTC, I am satisfied that the grant of a gaming machine licence for the purposes identified falls within the spectrum of the objects of the incorporated association.

101. For the purpose of reviewing this component of the delegate's decision I have considered the CIA together with the delegate's summary of the information included in the CIA that requires consideration under section 25(3) of the GM Act. I am satisfied that the delegate's summary of the CIA represents a fair and accurate assessment of the contents of the document and adopt and incorporate that summary for the purpose of the assessment of the CIA as set out below.

#### **Hours and days when the premises are open for the sale of liquor**

102. The current liquor licence allows for the sale of liquor for on-premises consumption from 10.00 am to 10.00 pm seven days per week with the Silks and Saddles area authorised to trade until 11.00 pm each day. As noted above in the consideration of the liquor licence application, should the gaming machine licence be granted the hours sought by the DTC are from 10.00 am to 11.59 pm from Sunday to Wednesday and from 10.00 am to 2.00 am the following day from Thursday to Saturday. The DTC has stated that those are the maximum hours during which gaming machine activity will be offered and the actual hours will be determined on a commercial basis.

103. The hours sought by the DTC for gaming machine activity are typical of those applicable to similar sporting and community clubs that offer gaming machine activity to their members see, for example, Casuarina All Sports Club Inc., Tracy Village Sports and Social Club Inc., Cazalys Palmerston Club Inc. etc.



### **Suitability of the premises – size, layout and facilities**

104. Whilst the primary purpose of the DTC is the conduct of thoroughbred horse racing, the venue offers a range of facilities to patrons from various areas including the Ted D'Ambrosio Bar, the Ted Bailey Grandstand, Winners Circle and Silks and Saddles. The DTC premises also includes a betting ring for on-course bookmakers and TAB facilities when horse racing is conducted at the venue. Function rooms are also available for hire to the general public including the Schweppes Pavilion that can accommodate 750 to 1,000 guests. The DTC currently has approximately 700 members.
105. The CIA states that the total area of the Ted D'Ambrosio Bar area is 550 square metres. Under the gaming machine proposal the breakdown of that area is estimated at 18% of floor space for the bistro, 28% for the gaming machine room, 17% for the sports bar and 37% for the beer garden area. Should the gaming machine licence be approved it is intended that the existing TAB area will be converted into a gaming machine room within a walled off area. The gaming room will be located completely within the DTC premises and will not be visible from the outside of the premises, including from any road or public area.
106. The area to be allocated to the gaming machine room appears to be reasonable in comparison to the overall area of the Ted D'Ambrosio Bar and the proposal to locate 55 gaming machines in the area.

### **Suitability of the premises – population, proximity to sensitive areas and other gaming venues**

107. The CIA notes that the DTC premises are located on a 43 hectare site on Dick Ward Drive in the suburb of Fannie Bay, five kilometres from the Darwin CBD. The Local Community Area ("LCA") identified in the CIA includes the Darwin suburbs of Fannie Bay, The Gardens, Ludmilla, The Narrows, Parap, Woolner, Bayview, Winnellie and East Point. The 2011 Census Data indicated that at that time, the LCA area had a population of approximately 10,790 people with 8,418 of those being adults. There has been population growth in the LCA over the last five years through the development and construction of multi-level apartment blocks and other dwellings in the relevant suburbs, including the recent redevelopment of the former Kurringal Flats to accommodate more than 160 new apartments.
108. So far as population demographics are concerned, the CIA states that the LCA may be described as a relatively middle aged area with 22% of the population being within the 0-17 age bracket, 19% being 18-29, 17% being 30-39 and the remaining residents being over 40 years of age.
109. As noted by the delegate, statistical data included in the CIA shows that the LCA has a higher proportion of people with higher level qualifications such as bachelor degrees, graduate qualifications or post graduate degrees when compared to the Northern Territory benchmark. The education profile of the LCA appears to be consistent with the age demographics of the LCA coupled with the data suggesting that a large percentage of people in the LCA are employed as managers and professionals. Consistent with that, household incomes for the LCA are estimated a being higher in comparison with other suburban areas of Darwin.
110. The Australian Bureau of Statistics' Socio-Economic Indexes for Areas ("SEIFA") is a tool used to assess the relative social advantage and disadvantage for particular localities or suburbs. According to the CIA the SEIFA analysis shows that the LCA is overall an area of relative social advantage. The decile scores across the LCA range from 9 for Fannie Bay, where the DTC is located, to 5 for the Ludmilla – Narrows area, due predominantly to the large proportion of Government housing in that neighbourhood.
111. The CIA states that there are five community gaming venues in the LCA namely the Darwin Sailing Club (which has decommissioned its gaming machines but retained the licence), the Darwin Trailer Boat Club, Parap Hotel, Winnellie Hotel and the Darwin Bowls and Social Club.

Gaming machines are also located SkyCity Casino, which is within the LCA, however those gaming machines are not taken into account for the purposes of the CIA assessment as they are regulated outside the GM Act.

112. The CIA indicates clearly that the LCA area is not regarded as an area of socio-economic deprivation in comparison to other areas within the Darwin Local Government Area.
113. The CIA identified twenty eight gambling sensitive sites, as defined by section 25(3)(c) of the GM Act, located within three kilometres of the DTC. Allowing that the DTC premises are located in a suburban setting the venue is surrounded by a mix of residential dwellings, shops, professional offices, educational facilities, churches and community venues. The closest of these sites or venues is a primary school which is 500 meters from the DTC. The buildings from which the DTC operates are separated from the surrounding areas by the various carparks and the racecourse itself.
114. As noted under considerations for the liquor licence application, the DTC has operated from its current location for over 50 years offering liquor and gambling services. The CIA notes that the DTC has co-existed with all the identified sites and sensitive venues for many years without causing identified harm to local businesses or community organisations.
115. On the basis of the matters set out above I am satisfied that the Ted D'Ambrosio Bar, situated within the DTC premises, is a suitable venue for the operation of gaming machines.

#### **Problem gambling risk management and responsible gambling strategies**

116. The 2014 report 'Gambling Harm in the Northern Territory: An Atlas of Venue Catchments', prepared for the Community Benefit Committee in May 2014, indicates that 75.6% of NT patrons are non-problem gamblers, 11.5% are low risk and 4.5% are high risk. However, it must be noted that the survey results were compiled from a low base of respondents and the results may be subject to significant fluctuation.
117. In terms of the risk of problem gambling at the DTC, the CIA reports that the venue currently exceeds the regulatory requirements in relation to its racing and wagering activities. Whilst not currently licensed to offer gaming machine facilities the DTC has indicated that it will have in place a compliant and meaningful policy and operational framework for harm minimisation. As required, the DTC will adhere to and enforce the code of practice for gambling in a responsible manner in line with statutory and community expectations.
118. In addition, the CIA indicates that the DTC will implement its own internal policies relating to gaming machine usage including permitting only one gaming machine to be used at the same time by one person, a limit on the reservation of gaming machines of three minutes and a policy of refusal to payout on cancelled credit or jackpots.
119. Noting the DTC's long history of compliance with the requirements for responsible service of gambling through its racing and wagering offerings, I am satisfied that the risk management and responsible gambling strategies and programs that are proposed for the venue are appropriate and in accordance with the requirements of best practice and the legislation.

#### **Contribution to the community**

120. For the majority of each year the DTC currently employs twenty full time staff and three part time staff. During the peak racing period, up to 750 casual staff may be employed. The DTC projects that should the applications be approved an additional two staff members would be required specifically for gaming machine activity.
121. The CIA made comment on the varied community contributions made by the DTC including cash and prize donations for charitable purposes, the loaning of equipment such as barbeques and furniture to community groups for fund raising purposes and the use of its venue for not-for-profit groups. The CIA states that since 2012 the DTC has contributed over \$60,000 to

the local community and that figure will increase, should the application be approved, through the allocation of additional grants and sponsorships to community based organisations and activities.

122. The DTC submitted that it presently contributes beyond any mandated requirement to support the community and that it maintains an interest in community identity and cohesion. It was submitted that the additional income generated from gaming machines would provide additional opportunities to support groups in need.

#### **Community Consultation:**

123. The authors of the CIA contacted 23 community groups requesting that they participate in a community survey to ascertain views on the potential or perceived impact of the gaming machine application within the LCA. Of the 23 organisations contacted eight responses were received with seven respondents indicating that they did not support the gaming machine application on the basis it would have a negative impact on the community.
124. The responses opposing the grant of a gaming machine licence were consistent in the view that there are sufficient gaming machines in the locality already and that gaming machines generally have a negative impact on the community. A number of the respondents made comment on the area being in lower socio-economic group and therefore more vulnerable to the adverse effects of gambling generally. As noted above, the CIA indicates clearly that the LCA is not an area of social disadvantage, apart from parts of The Narrows and Ludmilla suburbs.
125. The authors of the CIA also conducted a survey of DTC members to ascertain their views in relation to the gaming machine application. From approximately 700 members only 27 members responded to the survey. As correctly noted in the delegate decision, the value or weight that can be attributed to the outcome of the member survey is questionable given the poor response. However, of those who did respond 48% were in favour of gaming machines, 19% held neutral and 33% were not in favour of the proposal. Arguably, the vast majority of members are not concerned about or apathetic towards the potential for adverse outcome as a result of the installation of gaming machines at the venue.
126. The DTC members who support the application referred to the additional revenue that would be generated for the club, improvement of member facilities and the attraction of additional members. Other comments indicated concern in relation to the potential changes to the atmosphere, a potential detraction from the primary activities of the club and changes to the clientele.

#### **Written submissions in response to the application**

127. As noted in the delegate's decision notice, the GM Act does not specifically provide for objections to be made to a gaming machine application. However, in accordance with section 24A(2)(d) of the GM Act a person may make a submission in relation to a gaming machine application within 30 days of notice of the application being published. As noted above, the gaming machine application was advertised in the Northern Territory News on 11 March 2016, concurrently with notice of the club liquor licence application.
128. Of the 16 objections/responses received following publication of the Notices, 12 made comment on the gaming machine application in addition to the liquor licence application. Of those 12 respondents none were in favour of the grant of a gaming machine licence.
129. Submissions that the Director-General must consider in accordance with section 25(3) of the GM Act were received from the NT Police and from 11 of the neighbouring residents who objected to the grant of the club liquor licence. Residents of the neighbourhood who submissions in response to the gaming machine application were Dr Song Tai, Ms Vanessa Johnson, Mr Daryl Day and Mrs Cheryl Day, Ms Ingrid Nadjarian, Mrs Janet and Mr Geoffrey

Farnell, Ms Karen O'Dwyer, Ms Robin MacGillivray and Mr Peter Dostine, Mr John Gilbert, Ms Lorraine Hodgson, Mr Peter Zeroni and Ms Giovanna Zeroni and Mr Alan Buckingham

130. The NT Police submission noted that the DTC enjoys a virtual monopoly on horse racing and the expansion of services to include gaming machines would serve to lessen the diversity of licensed premises rather than improve the diversity for the benefit of the community.

**NT Police:**

131. It is difficult to reconcile that submission with what is proposed by the DTC in terms of the redevelopment of the Ted D'Ambrosio Bar and the installation of gaming machines. A large percentage of sporting organisations in the NT community are focussed on particular sports and yet provide various gambling and wagering services, including gaming machines, Keno and TAB facilities to their patrons. The DTC will continue to promote thoroughbred horse racing and the application relates to a proposal to offer gaming machines as an adjunct to its primary activity, as currently occurs at numerous sporting and community clubs throughout the Northern Territory.

**Dr Song Tai and Ms Vanessa Johnson**

132. Dr Song Tai and Ms Johnson simply stated that as residents of the local area they object to the application for 55 gaming machines and provided no evidence in support of that objection. As a result the submission is of minimal probative value and little weight can be attached to their submissions.

**Mr Darryl Day and Mrs Cheryl Day**

133. Mr and Mrs Day state that they strongly objected to the gaming machine application based on their assessment of the inadequacy of the CIA and their experiences as long term residents of Fannie Bay and Ludmilla. The submission contended that the CIA guidelines were not complied with, especially in relation to consultation requirements with cultural groups and local residents and argued that community leaders did not support a gaming machine licence. It was also contended that there was no substantial business case to support the assertion that grant of a licence would provide a community benefit. The lack of support from DTC members was also noted.
134. Mr and Ms Day submit further that the amenity of the area will be disrupted and the addition of gaming machines at the DTC will result in an increased negative impact of health, public safety and social wellbeing in the community. They noted their perception that the amenity of the neighbourhood would be disrupted given the change of activity within the DTC and also that the profile of patrons would shift to one which was attracted to gambling. They contended that increased foot and vehicle traffic taking back streets would result from people leaving the premises *'after extended sessions encouraged by additional gaming options'* and that *'increasing the mix of gambling, and loss of money for those in poverty, will add to social disruption, with a strong element of undesirable social disruption already evidenced in rough living areas, social housing dysfunction, theft and damage to local businesses'*.
135. I do not accept the submission that the CIA is defective or that it did not include sufficient consultation with cultural groups or local residents. Dickson Wohlsen Pty Ltd has prepared numerous CIA's for NT hotels and clubs applying for a new gaming machine licence or for an increase in gaming machine numbers. The CIA prepared for the DTC is compliant with the requirements of the GM Act and included the authors contacting some 23 community based organisations. The fact that only a small percentage of the organisations contacted actually responded is a matter for those organisations and not a matter within the control of the authors of the CIA.
136. In respect of the submission relating to the lack of a business case for the addition of gaming machines, the CIA includes a confidential section in which the financial benefits of the grant of a gaming machine licence to the DTC are assessed. Appropriately, the financial information

relating to the operation of the DTC is not required to be published in the public domain due to commercial privacy issues and sensitivities. That is the case for all CIA's associated with gaming machine applications in the NT. Having considered the confidential section of the CIA, I am satisfied that the DTC has demonstrated a sound business case for the operation of gaming machines at its premises.

**Ms Ingrid Nadjarian**

137. Ms Nadjarian simply adopted the submissions made by Mr and Mrs Day which is considered immediately above.

**Ms Janet Farnell and Mr Geoffrey Farnell:**

138. Mr and Mrs Farnell submitted that the operation of a gaming machine venue will attract additional patrons coming to and leaving the venues up to closing time at 2.00 am. The submission commented on noise and traffic problems experienced in the past with the carpark and with race course patrons and other users of the facility, such as the Touch Football Club. It was submitted that the CIA community consultation was very poorly done with only 20 community people attempted to be contacted and of those that responded, most were in opposition to the application.
139. In their application for review of the delegate's decision, Mrs and Mr Farnell made no further submissions specific to the gaming machine application apart from the likelihood of additional patrons attending the venue to use the gaming machines.

**Ms Karen O'Dwyer**

140. Ms O'Dwyer submitted that CIA failed to be convincing in stating that there will not be multiple harms resulting from *'more than doubling of machine numbers in the area'* and asserted that it has been shown that *'more machines equals more problems'*. Ms O'Dwyer submits that the DTC application is motivated by greed and a desire to create more opportunities to remove money from punters. She also submits that the statements in the CIA concerning the lower risk of harm due to the lower percentage of Aboriginal people residing in the LCA is selective and ignores the mobility of the populations from nearby indigenous communities.

**Ms Robin MacGillivray and Mr Peter Dostine**

141. Ms MacGillivray and Mr Dostine submitted that more gaming machines will take advantage of those addicted to gambling and increase the financial pressure felt by their families.

**Mr John Gilbert**

142. Mr Gilbert indicated opposition to poker machines in principle because of the *'misery that they bring to many people and their ability to prove addictive to many of our community'*. He submitted that the CIA skirted over past and ongoing problems that the local residents contend with and outlined issues arising from race meetings such as noise and pollution.
143. Mr Gilbert noted that the rationale for the gaming application envisages *'a vibrant gambling venue that would bring great financial gain to the club'* and its new members. However, he was of the view that the DTC *'is a club for horse racing enthusiasts and punters and it will become just one more nightclub/casino'* if the gaming machine licence is granted.

**Ms Lorraine Hodgson**

144. Ms Hodgson submitted that the DTC is already a gaming location and is set up to offer services to members and visitors for local and national races. She sees no need to diversify to gaming machines which, in her view, would detract from the existing offerings concerned with horse racing. She also noted that gambling is a problem in the NT and that that more opportunities for gambling are not required.

**Mr Peter Zeroni and Ms Giovanna Zeroni**

145. Mr Zeroni submitted several points of opposition which were adopted by his mother Ms Giovanna Zeroni. He noted that the DTC is the only provider of horse racing in the Darwin region and thus has a monopoly on such activity. He also submitted that there a multitude of other venues in the surrounding area that already provide gaming machines and noted that *'problem gambling destroys the lives of individuals, families and even businesses via the embezzling of company funds to feed gambling addictions and the financial debts'*.

**Mr Alan Buckingham**

146. Mr Buckingham submitted that a move by the DTC towards gaming machines will draw new clientele to the area and interfere with the amenity of the neighbourhood through increases to traffic, anti-social behaviour and crime. He stated that Darwin has ample gaming facilities already and sought to oppose the application.

**CONSIDERATION OF THE GAMING MACHINE LICENCE APPLICATION:**

147. The DTC has presented a detailed CIA with supporting evidence indicating that this application meets the requirements of the GM Act in relation to an application for the grant of a gaming machine licence. There is little doubt that the application, concurrent with the application for a for a new club liquor licence including a take away alcohol component, was the catalyst for a number of the submissions lodged by nearby residents.
148. The harms associated with gaming machines and problem gambling are well documented and well known within the general community. However, the Applicant in this instance has in place policies and procedures that have the effect of minimising the harms associated with gambling generally and horse racing wagering specifically. The fact that the DTC has been engaged in wagering and gambling activity for over 50 years is also of significant relevance in terms of the manner in which responsible gambling practices will be implemented and managed should the gaming machine licence be granted.
149. The CIA suggests a relatively small proportion of the non-government agencies who responded via the community representative survey conducted by the authors of the CIA have concerns with the DTC's application, believing the increase in gaming machines will have a negative effect on the community. However, none of those submissions relate specifically to the DTC and its conduct of the gambling component of its business despite the fact it has operated and promoted gambling via wagering on horse races for many years.
150. Whilst the comments of residents who lodged submissions and the organisations that opposed the grant of a new gaming machine licence are properly made, and no doubt indicative of the genuine views of the residents and organisations represented, of the respondents who oppose the additional gaming machines none raised concerns regarding the DTC specifically as opposed to the issues associated with problem gambling in the general sense. In addition and as evidenced by the content of the CIA, the management of the DTC intends to incorporate strategies aimed at reducing gaming-related harm if the application is approved.
151. The comprehensive CIA lodged in respect of this application raises no issues specific to the proposed GTC gaming machine room that would persuade me to refuse the application.
152. In terms of the requirements of the GM Act, the DTC has presented a well prepared application with strong supporting evidence indicating that this application meets the requirements of the GM Act in relation to an application for a gaming machine licence. The materials supporting the application and the CIA deal specifically with the minimisation of gambling related harm to vulnerable members of the community. I am satisfied that the DTC will have in place policies and procedures that will have the effect of minimising the harms

associated with gambling generally and the use of gaming machines specifically at the venue under consideration.

### Number of gaming machines

153. The Applicant does not currently hold a gaming machine licence and, under this application, has applied for a licence authorising the use of 55 gaming machines.
154. Regulation 3. of the *Gaming Machine Regulations* sets the maximum number of gaming machines for a Category 2 licensed premise at 55. The DTC has applied for a liquor licence to be issued under the *Liquor Act* endorsed AUTHORITY – CLUB, which is defined under section 3 of the GM Act as a club liquor licence with the result the premises are considered to be a Category 2 licensed premises pursuant to 2(a) of the *Liquor Regulations*.
155. As such, the DTC is able to apply for authority for a maximum of 55 gaming machines which falls within the statutory limit.

### Other matters the Director-General considers relevant

156. The application presented by the DTC is compliant with the relevant provisions of the GM Act.
157. The CIA raised no issues specific to the DTC that persuade me that the application should be refused. Whilst it may be perceived to be deficient or lacking detail in some areas, it addresses all of the matters which I am required to take into account in assessing an application of this type. As noted elsewhere in this decision notice, as evidenced by the DTC's submissions in support of the application, including the content of the CIA, the DTC intends to incorporate strategies aimed at reducing gaming related harm and to ensure that it is a responsible service provider if the application is approved.
158. In this case, I am satisfied that the DTC will have in place appropriate policies and procedures that will have the effect of minimising the harms associated with gambling generally and the use of gaming machines specifically at the venue under consideration.

## DECISIONS

### *Liquor Act:*

159. In accordance with section 14(2)(a) of the *Licensing (Director-General) Act* I have determined to affirm the decision of the delegate contained in the Decision Notice dated 23 December 2016. On the basis of the information provided in respect of the application, and for the reasons set out above, I approve the issue of a Club Liquor Licence to the Darwin Turf Club Incorporated for the purpose of conducting business under the liquor licence at the Ted D'Ambrosio Bar premises located within the Darwin Turf Club premises and trading as the Fannie Bay Racing and Sports Club. The Nominee/Manager of the club liquor licence is Mr Keith Stacey
160. The licence will be issued immediately following the publication of this decision and, in accordance with section 31(1) of the *Liquor Act*, is subject to a condition that the Licensee will not commence trade in the sale of liquor under the licence until such time as the proposed premises are refurbished and a certificate of occupancy under the *Building Act* has been issued to the licensee, authorising it to conduct the business of a tavern and take away liquor outlet at the premises.
161. Commencement of trade in the sale of liquor under the club liquor licence will also be conditional on the DTC obtaining the necessary approvals from the Development Consent Authority and other regulatory authorities. The Applicant will also be required to obtain the necessary approvals from the Northern Territory Fire Rescue Service in respect of patron capacity and fire safety issues prior to commencing operation as well as approval under



section 119 of the *Liquor Act* for the material alterations proposed for the Ted D'Ambrosio Bar area.

162. The licence will become operative, subject to the normal conditions associated with a club liquor licence, once the DTC has presented evidence to the satisfaction of the Director-General that the premises have been satisfactorily refurbished and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee.

**Gaming Machine Act:**

163. For the reasons set out above, and in accordance with section 14(2)(a) of the *Licensing (Director-General) Act*, I have determined to affirm the decision of the delegate contained in the Decision Notice dated 23 December 2016 to grant to the Darwin Turf Club Incorporated a gaming machine licence authorising the use of 55 gaming machines at premises known as the Ted D'Ambrosio Bar, located within the DTC premises and trading as the Fannie Bay Racing and Sports Club.
164. The 55 gaming machines are required to be included in the schedule attached to the gaming machine licence in which each individual gaming machine is identified and authorised for use. The schedule will be created upon submission by the DTC of the details pertaining to the 55 gaming machines once purchased.

## REVIEW OF DECISIONS

**Liquor Licence Application:**

165. Section 120ZA of the *Liquor Act* provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision to grant a liquor licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
166. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision. For the purpose of this decision, and in accordance with section 120ZB(1) of the Act, the affected persons are:
- The Darwin Turf Club Inc.
  - Acting Superintendent Trevor Owen, NT Police
  - Ms Vanessa Johnson
  - Mr Darryl and Mrs Cheryl Day
  - Mr Geoff Farnell and Ms Janet Farnell
  - Ms Karen O'Dwyer
  - Ms Robin MacGillivray and Mr Peter Dostine
  - Ms Ingrid Nadjarian
  - Mr John Gilbert
  - Ms Lorraine Hodgson
  - Mr Peter Zeroni and Ms Giovanna Zeroni
  - Ms Christine Free
  - Mr Alan Buckingham
  - Ms Frances Pagdin, Alcohol and Other Drugs Services, Department of Health
  - Ms Anna Malgorzewicz, City of Darwin

**Gaming Machine Licence Application:**

167. Section 166A of the GM Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. An application under section 24 for the grant of a gaming machine licence is specified in the Schedule and is a reviewable decision. Section 166C of the Act provides that a person affected by this decision may seek a review

before the Northern Territory Civil and Administrative Tribunal. For the purpose of the gaming machine application the affected persons are:

- The Darwin Turf Club Inc.
- Acting Superintendent Trevor Owen, NT Police
- Ms Mary Chalmers
- Ms Vanessa Johnson
- Mr Darryl and Mrs Cheryl Day
- Mr Geoff Farnell and Ms Janet Farnell
- Ms Karen O'Dwyer
- Ms Robin MacGillivray and Mr Peter Dostine
- Ms Ingrid Nadjarian
- Mr John Gilbert
- Ms Lorraine Hodgson
- Mr Peter Zeroni and Ms Giovanna Zeroni
- Mr Alan Buckingham
- Dr Song Tai



**Cindy Bravos**  
Director-General of Licensing

07 March 2017