

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Ocean Fresh Shops D1 and D2 Kitchener Drive Darwin NT 0800
Applicant:	Choong Enterprises Pty Ltd
Nominee:	Ronald Choong
Licence Number:	80518216
Proceedings:	To undertake a Hearing to consider an application for a variation to the liquor licence conditions for the premises known as Ocean Fresh pursuant to Section 32A of the <i>Liquor Act</i> and material alterations pursuant to Section 119 of the <i>Liquor Act</i> .
Members:	Mr R O'Sullivan (Chairman) Mr M Grimshaw Mrs J M Large
Attendees:	Mr R Choong, Nominee Ocean Fresh Mr T Liveris and Mr M Chin, Counsel for the applicant Mr T O'Neill for the Darwin Waterfront Corporation Ms J Kirstenfeldt, Licensing Inspector
Date of Hearing:	8 June 2011

Background

- 1) On 21 April 2011 Choong Enterprises Pty Ltd applied pursuant to Sections 32A and 119 of the *Liquor Act* ("the Act") for a change of Authority from a "Restaurant" Licence to a "Restaurant with an "On Licence", together with variations to liquor licence conditions and material alterations at the premises known as Ocean Fresh, located at Shops D1 and D2, 19 Kitchener Drive, Darwin. The material alterations involve the installation of a bar in the current display / servery area, installation of toilets and bi-fold doors to replace existing doors and windows. Variations to the licence conditions sought are to allow standing and service at the bar ancillary to a meal and also include the right to hold functions involving people consuming drinks and snack foods whilst standing during functions.
- 2) The Application was advertised in the NT News on Friday 11 March 2011 and Wednesday 16 March 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act. The advertisement was as follows:

Liquor Act

1st Notice of Application for a Change of Authority, Variation and Material Alteration of Liquor Licence

I, Ronald Kheong Huat Choong, on behalf of Choong Enterprises Pty Ltd, Hereby Give Notice that I have applied to the Northern Territory Licensing Commission to change the Authority of the Liquor Licence from a "Restaurant" to an "On" Liquor Licence for the premises known as Ocean Fresh located at Shop D1, D2 Wharf One Retail Precinct, Kitchener Drive Darwin NT.

I hereby give notice that I have also applied for a Variation and Material Alteration to the existing Liquor Licence.

Proposed variations include:

Remove the Licence Conditions:

- *Liquor shall only be sold for consumption ancillary to a meal.*
- *Liquor to be sold only by way of wait staff to patrons who are seated at a table.*

Include the Licence Conditions:

- *This licence allows for one (1) quality restaurant and ancillary bar. The premises shall at all times have the predominant appearance of and shall trade principally as a restaurant.*
- *This licence allows for patrons to stand in the internal bar area. Service of liquor in this area need not be by wait staff. Snack foods must be available for food consumption within this space. High tables and bar stools are permitted in this area.*
- *All patrons within the alfresco areas must be seated in order to promote the restaurant concept. High tables or bar stools are not permitted in the alfresco area.*
- *All liquor service to internal and external dining areas (excluding the bar) must be by wait staff and all patrons must be seated.*
- *Consumption of liquor without a meal will not be advertised or promoted.*
- *The word "Bar" shall not be used in any advertising or signage*
- *The Licensee may from time to time utilise the entire licensed area as a function area.*

For functions that do not include the provision of a meal, snack foods are to be offered to all persons in attendance. "Offered" is to be interpreted as the actual offer of food by way of waitperson service to persons attending or by way of a buffet dedicated to the approved function.

Patrons are permitted to stand on the licensed premises during an organised function.

Proposed material alterations include:

- *Alterations to the current servery area;*
- *Installation of male and female toilets; and*
- *Installation of bi-fold doors to replace the front entrance/exit doors and windows along the front wall.*

3) Two objections were lodged within the thirty day period required by the Act. The objections raised concerns that the change of Authority of the premises from a Restaurant to that of a Restaurant with an "On Licence" could promote the premises trading as a bar. This would cause noise and disruption to the residents living above the premises and could result in the Wharf Precinct becoming another nightclub similar to Mitchell Street. There was, also, concern expressed as to risk of glass being taken into the public domain.

4) The applicant in response to the objections advised:

- The alteration of the seafood display area to a bar is to allow diners the option of a pre dinner drink. The area only allows 6-8 diners standing, in addition to four high tables adjacent to the standing area;

- The bi fold doors are to provide a feeling of open space, particularly in the “Dry” season;
 - The venue will not serve draught beer only packaged / boutique beer and will cease serving alcohol as per their current licence (trading hours are from 11.30am until 10.00pm);
 - Patrons at functions would stand only in the inside area with no standing in the alfresco area while consuming alcohol.
- 5) On 19 May 2011 the Commission determined that the objection lodged by Commander Kate Vanderlaan, Northern Territory Police was valid and required a Hearing pursuant to Section 471(7) of the Act. The correspondence from the CEO of the Darwin Waterfront Corporation (DWC) did not constitute an objection and did not require a Hearing. However, the Commission, mindful of the role and function of the DWC, invited a representative to be present at the hearing to outline the concept and objectives of the Waterfront area.
 - 6) A Hearing was set down for Wednesday 8 June 2011 and all parties were advised of the original and the revised dates for the Hearing.

The Hearing

- 7) At the commencement of the Hearing Ms Kirstenfeldt tendered copies of the Commission’s Decision of 19 May 2011, Development Consent Authority’s response to the Ocean Fresh application and a listing of the proposed variations to Liquor Licence Number 80518216.
- 8) Mr Liveris, Counsel for the applicant, outlined the proposal subject of the application and reiterated the applicant’s response to the objectors. He explained that originally Ocean Fresh was a café but now the applicant wishes to run a fine dining seafood restaurant. Only diners at the restaurant would access the bar for a drink.
- 9) Mr Liveris explained the bi fold door would be similar to that at Il Lido on the Wharf and that, as only subtle background music will be played, noise would not be an issue. He said that the application to hold functions, where persons could stand and be offered food by a waitperson or have dedicated buffet, was not a primary interest but approval now would obviate the need to come back before the Commission if it ever was required.
- 10) Mr O’Neill, on behalf of the DWC, gave an overview of the Corporation’s purpose and objectives at the Wharf. He stated that the aim of the Corporation was to have a balance of amenities in the area in a family friendly environment. This balance had to take into account the interests of residents, in particular, those residents living above restaurants and bars. Mr O Neill felt that if the music was subtle and relaxing then there should not be any issue with noise from the restaurant.
- 11) One of the main concerns raised by Mr O Neill was the potential of glass to be taken into the public domain area by patrons and the safety of visitors to the Wharf Precinct.
- 12) In answer to queries raised by the Commission Mr Choong, the Nominee outlined his extensive experience in the restaurant business. Ocean Fresh restaurant would have the capacity for 150 diners and the bar would be three metres long and accommodate 6-8 standing and some seated at high tables. After having an initial drink at the bar all further service will be via waiters. There will be 3 - 4 tables outside in a designated smoking area.
- 13) Mr Choong explained that if and when Corporate Functions are held there would be standing allowed inside only and drinks would be from the bar or waiter staff. If there is a requirement for a function to be outside then an application for a Licence Variation would be made. The applicant did not want the licence to be amended to allow non diners to be served alcohol. The advertisement advising of a change from “Restaurant” to “On Licence” was based on advice from the Licensing Inspectorate, but it was not the intention to serve non diners.

Consideration of the Issues

14) No objection has been raised for the installation of toilets on the premises and the Commission gives immediate approval to that part of the material alterations.

15) All the objections related to the change in Licence Authority, from a Restaurant to a Restaurant with an "On Licence", which the installation of a bar and allowing standing at the bar mistakenly appeared to require. This mistaken belief that an "On Licence" was required, in the Commission's view, contributed to the lodgement of an objection. The objection from the Northern Territory Police submitted that the granting of an "On Licence" would:

"make it easier for other licensed premises in the wharf precinct to also apply for "On" licences. This has the potential for the Wharf Precinct to become another nightclub strip similar to that in Mitchell Street which is in close proximity to a family venue such as the Wave Pool and the beach area"

16) The tendered document from the Development Consent Authority (DCA) advises that the current approval for the premises is for a restaurant and the granting of an "On Licence" may change the status of Ocean Fresh from a restaurant to a hotel. The DCA do state that this would depend on the operation of the business and defined an "hotel" as

"a premise which requires a licence under the Liquor Act and where, as a principal part of the business, alcoholic beverages are ordinarily sold to the public for consumption on the premises whether or not meals are served"

17) The applicant was advised to apply for an "On Licence" because of the installation of a bar where people could have a drink without any meal being provided. However, it has become very obvious from the Applicant's submission in response to the objections and the evidence given at the hearing that the bar area is very small and is only for the use of patrons ancillary to dining in the restaurant. It is very common for restaurants to have such an area available for customers to have a drink while waiting for their table or until their dining companions arrive. Allowing some of the patrons to stand in this area for a short period of time is also an accepted practice. In no way can this be defined as a hotel or lead to the establishment of a nightclub strip at the Wharf Precinct. In view of this the Commission feels that the application under consideration should be for a Restaurant with some variation to its previous conditions and not for a Restaurant with an "On Licence".

18) The Commission has considered the replacement of the current front entrance/doors and windows along the front wall with bi fold doors. In this area of the Wharf Precinct there are two premises, namely Il Lido which has bi fold doors and Fiddler's Green, in relation to which on 18 June 2010 the Commission made a determination that:

"Entertainment: Entertainment is to be allowed internally only and be 'easy listening'. There will be no bi-fold doors and solid doors will be installed between the inside and the alfresco area. These doors will be closed when music is playing inside. There will be no amplification of music in any part of the premises and all music will cease at 11.00 pm."

19) The difference between the premises is that Il Lido is trading as a Restaurant with only subtle background music whilst the Fiddler's Green has an "On Licence" and there is entertainment and easy listening music inside. Ocean Fresh is clearly, similar to Il Lido, a Restaurant and therefore the use of bi fold doors should not pose a problem in the neighbourhood. Mr O'Neill representing the DWC did not think there would be a problem and the Commission notes that there were no objections from the residents in the building. However, to lessen any noise disturbance on the residents the Commission believes that there should be no amplification of the music played inside the restaurant to the alfresco area.

20) The original application requests the use of the entire licensed premises for functions:

“The Licensee may from time to time utilise the entire licensed area as a function area.

For functions that do not include the provision of a meal, snack foods are to be offered to all persons in attendance. “Offered” is to be interpreted as the actual offer of food by way of wait person service to persons attending or by way of a buffet dedicated to the approved function. Patrons are permitted to stand on the licensed premises during an organised function.”

21) On 21 March 2011, following an application by Fiddler’s Green, the Commission determined:

“to refuse the application to allow guests of Corporate functions, cocktail parties etc to be allowed to stand in the Alfresco Area, following prior notice to the Director of Licensing. However, the Licensee may apply to the Director of Licensing for a Special Liquor Licence for any specific event he wishes to host at which time he would need to provide details of the organisation, number of guests, the area to be occupied, limited times for the event, arrangements for returning the area to a fully seated dining area and the security that has been arranged”

22) At the Hearing Mr Choong stated that Corporate Functions requiring patrons to be standing would only be held inside and drinks would be from the bar or waiter staff. If there is a requirement for a function to be outside then an application for a Special Licence would be made. The Commission endorses this amendment to the application and proposes to include a condition in the Ocean Fresh Licence similar to the condition contained in the Fiddler’s Green Licence.

Decision

23) The Commission has determined:

- a) Not to approve a change in Authority of the Liquor Licence from a “Restaurant” to a “Restaurant with an “On Licence” for the premises known as Ocean Fresh as the trading intention of the applicant is clearly to continue operation as a Restaurant;
- b) To approve variations to Ocean Fresh’s current Restaurant Licence as follows:

Remove the Licence Conditions:

- *Liquor shall only be sold for consumption ancillary to a meal.*
- *Liquor to be sold only by way of wait staff to patrons who are seated at a table.*

Include the Licence Conditions:

- *This licence allows for one (1) quality restaurant and ancillary bar. The premises shall at all times have the predominant appearance of and shall trade principally as a restaurant.*
- *This licence allows for patrons to stand in the internal bar area. Service of liquor in this area need not be by wait staff. Snack foods must be available for food consumption within this space. High tables and bar stools are permitted in this area.*
- *All patrons within the alfresco areas must be seated in order to promote the restaurant concept. High tables or bar stools are not permitted in the alfresco area.*
- *All liquor service to internal and external dining areas (excluding the bar) must be by wait staff and all patrons must be seated.*

- *The Licensee may from time to time utilise the inside licensed area as a function area. For functions that do not include the provision of a meal, snack foods are to be offered to all persons in attendance. "Offered" is to be interpreted as the actual offer of food by way of wait person service to persons attending or by way of a buffet dedicated to the approved function. Patrons are permitted to stand in the inside licensed premises during an organised function.*
- c) In relation to Corporate functions being held in the Alfresco Area, the Licensee is to apply to the Director of Licensing for a Licence Variation. At that time he would need to provide details of the organisation, number of guests, the area to be occupied, limited times for the event, arrangements for returning the area to a fully seated dining area and the security that has been arranged.
- d) To approve material alteration which include:
- Alterations to the current servery area;
 - Installation of male and female toilets; and
 - Installation of bi-fold doors to replace the front entrance/exit doors and windows along the front wall.

Richard O'Sullivan
Chairman

30 June 2011