

# Northern Territory Licensing Commission

## Decision on whether Objections will proceed to Hearing

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<b>Premises:</b>	21 On the Wharf
<b>Applicant:</b>	2 Fresh Pty Ltd
<b>Nominees</b>	Brian Douglas Barnes
<b>Licence Number:</b>	N/A
<b>Objectors:</b>	Ms Rachel Waugh Mr Thanh (Tommy) D Huynh Mr Steve Bennett and Ms Dee Skewes The Traders of Stokes Hill Wharf Mr James Lau Mr John Young A. R. Baker Ms Lisa Price Petitioners
<b>Legislation:</b>	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
<b>Decision of:</b>	Philip Timney (Legal Member)
<b>Date of decision:</b>	15 May 2012

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### Background

- 1) On 8 February 2012, 2 Fresh Pty Ltd applied pursuant to Section 26 of the *Liquor Act* ("the Act") for an "Off Premises Liquor Licence" to sell liquor at the proposed premises to be known as "21 on the Wharf", located at Shop B3 Stokes Hill Wharf, Darwin.
- 2) The Application was advertised in the NT News on Wednesday, 22 February 2012 and Friday 24 February 2012 pursuant to Section 27(1) of the Act.
- 3) The advertisement was as follows:

*I, Brian Barnes, on behalf of 2 Fresh Pty Ltd, hereby give notice that I have applied to the Northern Territory Licensing Commission for an "Off Premises Liquor Licence" to sell liquor from the premises known as "21 on the Wharf" located at Shop B3 Stokes Hill Wharf, Darwin NT.*

*Proposed trading details for the sale of liquor are as follows:*

*The concept of the premises will be that of a café, with alcohol available for takeaway by customers of "21 on the Wharf" and other wharf patrons to consume at the wharf during liquor trading hours. Patrons will be able to purchase their food and beverages from the café and consume it at the seating areas provided within the wharf precinct.*

*Patrons may purchase alcohol without the requirement of purchasing or consuming a meal. Consumption of liquor without a meal is not to be advertised or promoted.*

*Liquor may be sold from 10:00 hours until 22:00 hours, seven days a week.*

*All alcoholic beverages to be sold in opened containers.*

*No more than six (6) units of beverage to be sold to an individual customer on each occasion.*

*This is the first notice of application. The notice will be published again on Friday, 24 February 2012.*

*The objection period is deemed to commence from Friday, 24 February 2012 (date of publication of second notice).*

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

- a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- b) health, education, public safety or social conditions in the community*

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

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

*Dated this 22 Day of February 2012.*

- 4) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty days after the publication of the last notice, namely on or before Monday 26 March 2012.
- 5) Section 47F of the Act prescribes the circumstances in which an objection may be made, specifies the grounds for objection and identifies the persons entitled to object to a particular application. Relevant to this application Section 47F provides:

***47F Person may object to certain applications***

- (1) Subject to this Section, a person, organisation or group may make an objection to the following applications:*

- (a) an application for the grant of a licence, as notified under Section 27*

- (2) The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –*

- (a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*

- (b) health, education, public safety or social conditions in the community*

- (3) Only the following persons, organisations or groups may make an objection under sub-Section (1):*

- (a) a person residing or working in the neighbourhood where the premises the subject of the application are or will be located*

- (b) a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located*

- (c) *a member or employee of the Police Force acting in that capacity*
- (d) *a member or employee of the Fire and Rescue Service within the meaning of the Fire and Emergency Act acting in that capacity*
- (e) *an Agency or public authority that performs functions relating to public amenities, including health, education and public safety*
- (f) *a community-based organisation or group (for example, a local action group or a charity)*

6) Eight objections have been lodged in response to the application and the applicant has provided a response to those objections pursuant to Section 47G of the Act. In addition, a petition objecting to the grant of licence was received by the Director of Licensing. Comments were also received from NT Police and the Darwin Waterfront Corporation. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing.

#### **Objection from Ms Rachel Waugh:**

- 7) Ms Waugh is an employee of the Wharf Oyster Bar and Take-Away Liquor, the only premises currently licensed to sell alcohol for off-premise consumption at Stokes Hill Wharf. As such she is entitled to lodge an objection as an employee working in the neighbourhood where the proposed premises would be located. Section 47F(3)(a) refers. Ms Waugh's objection is dated 2 March 2012 and was lodged within the objection period.
- 8) Ms Waugh objects to the application on the grounds the grant of an additional liquor licence at the Stokes Hill Wharf has the potential to adversely impact on the safety of the environment in which she presently works. She states that the current licensed premises operates in a family friendly environment with strict rules in place to ensure customer safety and the grant of another licence will impact detrimentally on the hard work done by her employer.
- 9) Ms Waugh also states that the grant of a new licence would result in patrons of the Wharf being "interrupted and hassled by an intoxicated person/s". Ms Waugh also notes that Stokes Hill Wharf is surrounded by water and that an additional licence would increase the task of controlling patrons and preventing the risk of intoxicated person falling from the wharf. Ms Waugh also objects to the application on the ground that only one security guard is employed for the precinct and this would be insufficient if another licence were to be granted.
- 10) Ms Waugh also objects on the ground that her employment with the current licensee is dependent on trade from regular customers and that the applicant would not cater for the needs of those regular customers who are predominantly families with young children.

#### **Objection from Mr Thanh (Tommy) D Huynh:**

- 11) Mr Huynh is the owner and dual Nominee of the Wharf Oyster Bar and Take-Away Liquor, licensed premises located at Stokes Hill Wharf. He is entitled to lodge an objection on the criteria specified in Section 47F(3)(a) and (b) of the Act in that he works in and holds an interest in property within the neighbourhood where the proposed premises would operate. Mr Huynh's objection is dated 2 March 2012 and was lodged within the prescribed time limit.
- 12) Mr Huynh objects to the grant of an additional liquor licence in the Stokes Hill Wharf precinct on the grounds it would present increased risk to children and other visitors to the precinct as a result of excessive alcohol consumption. He states that there is no community demand for a further take away liquor licence as there are numerous alcohol providers already in the greater neighbourhood near to and surrounding the Stokes Hill Wharf area.

- 13) Mr Huynh also objects on the grounds the proposed premises will be located near the Kid Safe area, placing the safety of parents and children at risk from exposure to alcohol consumption. He states that Stokes Hill Wharf is “probably the only family venue in Darwin” and a popular place for group excursions and that an increase in the density and availability of alcohol will only create more alcohol related incidents and thereby damage the Stokes Hill Wharf image.

**Objection Mr Steve Bennett and Ms Dee Skewes:**

- 14) Mr Bennett and Ms Skewes lodged an objection to the grant of a licence by letter received on 3 March 2012, within the objection period. They object on the grounds that the Stokes Hill Wharf area is adequately served by the existing off premise liquor outlet and that an additional outlet will provide a greater attraction for drinkers. They state that the use of multiple bars is suitable for the Darwin Waterfront precinct but not a family oriented venue such as the Stokes Hill Wharf area.
- 15) Mr Bennett and Ms Skewes indicate their address as 69 Copeland Crescent Nakara. They provide no information as to how they fall within the parameters of Section 47F(3) of the act as persons entitled to lodge an objection to the grant of a liquor licence.

**Objection from the Traders of Stokes Hill Wharf:**

- 16) The “Traders of Stokes Hill Wharf” lodged an objection by letter dated 6 March 2012, within the prescribed objection period. The letter is signed by 9 individuals who operate business at Stokes Hill Wharf, including Mr Huynh who is dual nominee of an existing liquor outlet on the Wharf and who also lodged an objection in his own right. As such the signatories satisfy the criteria specified in Section 47F(3)(a) and (b) as person entitled to lodge an objection.
- 17) The objectors refer to previous anti-social behaviour at the Wharf as a result of people bringing their own alcohol to the precinct. They state that this situation was controlled by the employment of security services and the limitation on liquor outlets to one take away venue and one licensed restaurant. They object to the grant of an additional liquor licence on the basis they are comfortable with the existing arrangement and wish to maintain the safe environment achieved over the past twenty years.
- 18) The objectors state there is no community demand for an additional liquor outlet at the Wharf and it would not be in the public interest for a further licence to be granted and that an additional licence would increase the difficulty of controlling and monitoring liquor consumption. They add that an additional licence would impact on the family orientated nature of the area and that the ambience of the venue would be overwhelmed by the number of liquor outlets.
- 19) The objectors also state that it is inappropriate for a take away café style food shop to promote the sale of alcohol with a meal to the youths of the community. They reiterate that an additional liquor licence will dramatically increase the availability of alcohol service providers on the Wharf and create more frequent alcohol related incidents that will affect safety and the wellbeing of patrons.

**Objection from Mr James Lau:**

- 20) Mr Lau resides at 41/106 Smith Street and states that he is a regular patron of the Wharf Eatery area. His objection was received within the objection period and Mr Lau satisfies the criteria of a person residing in the vicinity where the proposed licence will be located.
- 21) Mr Lau notes that the Stokes Hill Wharf area is a popular family venue which does not suffer from the alcohol related incidents of anti-social behaviour experienced in Mitchell Street. He objects to the application on the basis an additional liquor outlet would make alcohol consumption harder to control and monitor and that alcohol related incidents will occur.

- 22) Mr Lau notes that the proposed liquor outlet will be located close to the ice cream shop and the Kid Safe area which will expose youths to alcohol consumption and detract from the safe and family friendly venue currently operating at the Wharf.

**Objection from Mr John Young:**

- 23) Mr Young lodged an objection by letter dated 17 March 2012, within the objection period. He states that he is a regular patron of the Stokes Hill Wharf Eatery and provided a postal address in Palmerston. Mr Young's letter does not indicate his standing in terms of the criteria for objectors specified in Section 47F(3) of the Act.
- 24) Mr Young notes that the Stokes Hill Wharf area has always presented a safe and friendly family orientated atmosphere and that the alcohol requirements of patrons are catered for by the existing licensed traders. He objects on the basis an additional liquor licence will create difficulties in identifying intoxicated patrons if they are able to move between liquor outlets. Mr Young states that trading at Stokes Hill Wharf is seasonal and declines significantly during the wet season and that the absence of security and Police patrols emphasise the need for controlled service of alcohol.
- 25) Mr Young also objects on the basis he has never heard of a take away food outlet being granted a liquor licence and that perhaps the proprietor has another agenda.

**Objection from A. R. Baker:**

- 26) By letter dated 18 March 2012, Mr Baker objected to the grant of an Off Premises Liquor Licence. The objection was received within the prescribed period. Mr Baker provides no information as to how he satisfies the criteria for objectors specified in Section 47F(3) of the Act.
- 27) Mr Baker objects on the basis an additional liquor licence will increase the density of alcohol service providers and make the control and monitoring of alcohol consumption more difficult and lead to an increase in alcohol related incidents. He notes that Stokes Hill Wharf is a family friendly area and safe environment due to the limited number of liquor outlets in the area and that an additional licence is not in the public interest. He states that the application to have a take away liquor licence attached to a take away food outlet is "uncomprehending and irresponsible".
- 28) Mr Baker notes that the proposed premises are to be located near the Kid Safe area and ice-cream shop, placing children's safety at greater risk. He objects to the grant of a licence on the basis it would increase the chances of people being intoxicated, anti-social behaviour, assaults and bad publicity about the image of the Wharf.

**Objection from Ms Lisa Price:**

- 29) Ms Price is the Manager of the Ice Cream Shop on the Wharf and objected to the application by letter dated 23 March 2012, within the prescribed period for objections. Ms Price has operated her family business at the Wharf for a period of almost 10 years. Her premises are located directly opposite the proposed licensed premises. As such she is entitled to lodge an objection pursuant to Section 47F(a) and (b) of the Act.
- 30) Ms Price objects on the grounds the proposed premises will be located near the Child Safe Area at the Wharf and that the sale of more alcohol could create disturbances for families, local patrons and tourists. She states that the current licensed venues apply strict rules to ensure safety in a vibrant environment and that their hard work could be harmed by the grant of an additional liquor licence. Ms Price states that many of her customers are against the grant of another liquor licence at the Wharf and that some will stop coming to the venue if this occurs.
- 31) Ms Price also objects on the basis an additional liquor outlet will affect the Wharf's family friendly environment and that young children should not have to witness intoxicated

behaviour. She notes that the current off premises liquor outlet is located away from her premises in the next arcade which keeps “bad behaviours” to that area only. She notes that the staff of that venue control and monitor the Wharf’s patrons and provide a great customer service. She also states that the grant of a new liquor licence will harm the trade of existing licensees and will attract the wrong kind of patrons to the Wharf area. In conclusion, Ms Price states that it is not in the interests of any of the Wharf traders to agree with any more liquor licensed outlets.

#### **Objection Petition:**

- 32) The Director of Licensing received a petition opposing the grant of the liquor licence containing seventy-two pages of signatures. The petition was lodged by Mr Tommy Huynh. The petition notes that Stokes Hill Wharf is a family friendly orientated venue and that a higher density of liquor outlets will result in more frequent alcohol related incidents. The petition states that there have been no alcohol related incidents at the Wharf for over twenty years due to the management of current licensees and the introduction of new liquor outlets may change this and the sale of alcohol alongside food gives the misconception to youth that having an alcoholic beverage is the norm thus influencing underage drinking and effecting their mental and physical wellbeing. The petition states that the signatories are concerned citizens who urge their strong disagreement against the proposal for granting liquor licences at the new venues at Stokes Hill Wharf.
- 33) Whilst the petition is not in a form constituting an objection as prescribed by the Act, it is open to the Commission to inform itself as it sees fit in determining whether to grant a liquor licence. In doing so the Commission may take note of the concerns raised by the petitioners without the requirement for the signatories to the petition to appear personally at a Hearing. It is also noted that the applicant is aware of the petition and its contents and has been provided formal comments in response.

#### **Comments from NT Police, Fire & Emergency Services:**

- 34) By letter dated 27 March 2012, Commander Kate Vanderlaan of Northern Territory Police, provided the following comments and concerns. She noted the current moratorium on the grant of new take away liquor licenses introduced by the Minister for Racing, Gaming and Licensing and supported by Police. Commander Vanderlaan also noted that Police do not support the grant of a new off premises liquor licence for sales to patrons of the Stokes Hill Wharf as the existing licensed premises cater for the alcohol requirements of patrons of the venue.
- 35) Commander Vanderlaan also noted that patrons are permitted to bring their own alcohol to the Wharf area and are not reliant on licensed premises for that purpose. She also noted that the application as advertised does not restrict the area within which patrons would be able to consume alcohol purchased from the proposed premises and, as a consequence, does not actively promote or encourage the consumption of alcohol with a meal. Commander Vanderlaan also comments that to grant the application will create a “roll on” effect and promote other retail outlets on the Wharf to also apply for liquor licences.
- 36) Whilst the letter from Commander Vanderlaan is not styled as a formal objection it is open to the Commission to take the comments and concerns into consideration during its deliberations in respect of whether the licence sought should be granted.

#### **Comments from the Darwin Waterfront Corporation:**

- 37) By letter dated 1 March 2012 Mr Pat Coleman, CEO of the Darwin Waterfront Corporation, noted that the DWC did not object to the application but noted the following concerns. There is a moratorium on the grant of new take away liquor licences in the NT. It could reasonably be expected that the grant of this licence will lead to similar applications by other traders at the Stokes Hill Wharf area. Mr Coleman noted that there are no controls in place to ensure that alcohol purchased from the proposed premises will be consumed on

the Stokes Hill Wharf and not taken off site and the potential for alcohol and glass to be taken into the public domain areas of the Darwin Waterfront is an issue of considerable concern to the Corporation.

- 38) Again, whilst not a formal objection, it is open to the Commission to take Mr Coleman's comments on behalf of the Darwin Waterfront Corporation into account in considering the application for the grant of a liquor licence.

#### **Applicant's Response to Objections:**

- 39) Mr Brian Barnes responded to the objections on behalf of the applicant corporation by letter dated 23 April 2012. He noted that the petition included the signatures of 475 persons, almost 65% of whom did not identify their place of residence or resided outside the Darwin Municipality, with only 4% identified as residing in the Darwin city area. He submitted that the Commission should give little weight to the petition as it was gathered by business proprietors who had an economic interest in preventing competition in the Stokes Hill Wharf area.
- 40) In respect of the moratorium on the grant of new take away alcohol licences, Mr Barnes notes that the application seeks a limited licence with each container of alcohol to be opened at the time of sale which limits the possibility of alcohol abuse. He also notes that the licence is requested for restricted hours only, namely from 9.00 am to 10.00 pm when the Wharf eateries are open for trade.
- 41) In response to the comments from Police and the Darwin Waterfront Corporation Mr Barnes states that it appears they do not fully understand the licence being applied for in terms of the capacity to remove alcohol from the Stokes Hill Wharf vicinity. He states that patrons of the existing licence premises could remove alcohol from the Wharf area but it is unlikely that patrons would do so due to the restrictions on the amount of alcohol permitted to be purchased by an individual, the actual cost of the alcohol compared to normal take away pricing and the fact all containers are opened at the point of sale.
- 42) Mr Barnes submits that the objections stating that there is no community demand for another licensed outlet in the Wharf area are commercially motivated and that limiting competition denies the public the right to choice and competitive prices. He states that 2,000 visitors per day attend the Stokes Hill Wharf precinct during peak periods and that the seating capacity has recently been increased from 400 to 600.
- 43) In respect of the objections relating to the sale of alcohol from a take away café style food shop, Mr Barnes notes that two objectors also operate licensed restaurant premises at Stokes Hill Wharf, Cullen Bay and the Darwin Waterfront and also cites other mixed use businesses in the Darwin area.
- 44) Mr Barnes submits that statements linking his application to the Mitchell Street precinct are grossly overstated and misstate his intentions for the proposed licensed premises. He states that the addition of another alcohol outlet will not impact on the volume of alcohol sold and will not encourage patrons to drink more alcohol than they would otherwise consume. He also points out the difference in licence conditions applied to Mitchell Street premises compared to the limited licence for which he has applied plus the fact that patrons of Stokes Hill Wharf are currently permitted to bring their own alcohol to the venue. Mr Barnes also notes that security staff are employed at Stokes Hill Wharf with responsibility for monitoring and controlling patron behaviour.
- 45) In support of the application, Mr Barnes states that his proposed premises are located in a one of Darwin's prime tourist areas and, as many local patrons bring their own alcohol, the major market for alcohol sales are tourists and there is presently no competition in that market.
- 46) In concluding Mr Barnes states that the licence sought is in the same terms as the existing licence and cannot be said to be likely to be the cause of anti-social behaviour in the area.

## Consideration of the Issues

- 47) In my opinion the objections lodged by Mr Tommy Huynh and Ms Rachael Waugh are commercially motivated and, as such, do not fall within the grounds for objection set out in Section 47F(2). Mr Huynh is the proprietor of the only premises licensed to sell take away alcohol at the Stokes Hill Wharf for off premises consumption at present and Ms Waugh is an employee of that business. Both objectors refer to the potential for alcohol consumption to cause harm and increase risk for patrons of the area they do not specify any component of the application that would distinguish the proposed premises from the one that already exists in the area.
- 48) The objections of Mr Huynh and Ms Waugh should be dismissed on the basis they do not comply with the specified requirements for an objection to an application for a licence of the type sought by the applicant.
- 49) Mr Steve Bennett and Ms Dee Skewes do not appear to fall within the categories of persons who may lodge an objection as set out in Section 47F(3) of the Act, being persons who reside or work in the neighbourhood of the proposed premises. As a result that objection should be dismissed. An assessment of the objections lodged by Mr John Young and Mr AR Baker reaches the same conclusion and those objections should be dismissed on the same grounds.
- 50) The objection lodged on behalf of the Traders of Stokes Hill Wharf relates to the amenity of the Stokes Hill Wharf precinct where the premises the subject of the application will be located and public safety or social conditions in the community. The signatories to the letter of objection are persons who work in or have an interest in land within the neighbourhood where the premises are to be located. As such that objection is valid and should be referred to a Hearing before the Commission.
- 51) Mr Tommy Huynh is a signatory to the objection lodged on behalf of the Traders of Stokes Hill Wharf. As noted above, in my opinion Mr Huynh's objection is commercially motivated. He should not be permitted to further press his objection at a Hearing for the reasons set out above in respect of his personal letter of objection.
- 52) Similarly, Ms Price is a person who works in the vicinity of the proposed venue and who holds an interest in land at the Stokes Hill Wharf. However, her business does not involve the sale of alcohol and does not hold a liquor licence. Ms Price's objection relates to the public amenity and safety of the neighbourhood and, in particular, the specific location of the proposed premises with reference to her premises and the Kid Safe area. As such, the objection lodged by Ms Price is valid and should be referred to a Hearing.
- 53) Applying a liberal interpretation, Mr James Lau resides in the neighbourhood in which the proposed premises will be located being a resident of Smith Street in the Darwin CBD. His objection relates to the actual location of the proposed premises and the potential for an additional liquor outlet to impact adversely on the amenity of the neighbourhood. On that basis the objection is valid and should be referred to a Hearing.

## Decision

- 54) The Commission has determined that the objections lodged by The Traders of Stokes Hill Wharf, Mr James Lau and Ms Lisa Price are valid and require a Hearing pursuant to Section 47I(7) of the Act.
- 55) The objections lodged by Ms Rachel Waugh, Mr Tommy Huynh, Mr John Young, Mr AR Baker, Mr Steve Bennett and Ms Dee Skewes do not fall within the criteria for objections specified in the Act for the reasons set out above. As a result, those objections are not required to be referred to a Hearing and should be dismissed.

56) Pursuant to Section 471(4) of the Act I direct the Director to inform Ms Rachel Waugh, Mr Tommy Huynh, Mr John Young, Mr AR Baker, Mr Steve Bennett and Ms Dee Skewes that their objections have been dismissed.

Philip Timney  
Legal Member

15 May 2012