

Northern Territory Licensing Commission

Decision on whether Objections will proceed to Hearing

Premises:	Fiddler's Green
Applicant:	Finsio Pty Ltd
Dual nominees:	Mr Geoffrey Finestone Ms Siobhan Finestone
License Number:	80818238
Objector:	Mr Neil Wight, Senior Policy Advisor Alcohol and Other Drug Program, Department of Health
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Mr Philip Timney (Legal Member)
Date of decision:	21 August 2012

Background

- 1) In a letter dated 28 May 2012, Mr Geoffrey Finestone and Ms Siobhan Finestone applied pursuant to Section 32A(1) of the *Liquor Act* ("the Act") for a variation of the licence conditions associated with the liquor licence for Fiddler's Green. Mr and Ms Finestone are the Dual Nominees for the licensed premises. The application sought a variation of conditions to authorise for the sale of alcohol from 10.00 am daily. Fiddler's Green conducts its business under a restaurant licence with on licence conditions. The current licence conditions authorise the sale of alcohol from 11.30 am daily.
- 2) The Application was advertised in the NT News on Friday 1 June 2012 and Wednesday 6 June 2012 pursuant to Section 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

Finsio Pty Ltd, hereby give notice that it has applied to the Northern Territory Licensing Commission for a change of alcohol trading hours to the premises, Liquor Licence (number 80818238) known as Fiddler's Green, located at 19 Kitchener Drive, Darwin, NT.

The application consists of:

- *Extending trading hours to commence alcohol trading from 10:00am, seven days a week excluding Good Friday and Christmas Day. Current trading hours are 11:30am to 11:30pm, seven days a week excluding Good Friday and Christmas Day.*

The premises' licence conditions will remain unchanged.

This is the first notice of application. The notice will be published again in the Northern Territory Newspaper on Wednesday 6 June 2012.

The objection period is deemed to commence from Wednesday 6 June 2012.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the **material alterations of licensed premises** 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, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 1st Day of June 2012 (Emphasis added).

- 4) It should be noted that the advertisement is incorrectly worded, refer to underlining above. This application is for a variation of licence conditions and not an application for material alterations. It is not considered that the error is fatal to the application as the advertisement did in fact attract an objection. In addition, on a reading of the advertisement as a whole it is clear that the application is for variation of licence conditions.
- 5) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice published on 6 June 2012, namely on or before Monday 9 July 2012.
- 6) 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:*

(b) *an application for a variation of the conditions of a licence, as notified under Section 32A;*

(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*

(e) *an Agency or public authority that performs functions relating to public amenities, including health, education and public safety*

- 7) One objection has been lodged in response to the application and the applicant has provided a response to that objection pursuant to Section 47G of the Act. Under Section

471 of the Act the Commission must determine whether objections received are to proceed to Hearing.

- 8) It should be noted that comments were sought on the application from Northern Territory Police and the Darwin Waterfront Corporation, as well as from the Department of Health. Mr Pat Coleman, CEO of the Darwin Waterfront Corporation, responded by letter dated 26 June 2012 and advised that the Corporation would not object to the application being approved on a six month trial basis. Ms Jacky Divall, Drug Diversion Coordinator, Northern Territory Police, advised by email dated 12 June 2012 that from a Police perspective it was not expected that the application would cause any unforeseen anti-social behaviour and that Police support the application.
- 9) In addition, Mr John Elferink MLA, Member for Port Darwin, wrote a letter to the Commission, received on 18 June 2012, in support of the application. Mr Elferink noted that he had previously objected to the grant of the Fiddler's Green liquor licence however he now conceded that his earlier misgivings regarding the impact of the premises on the local community had been entirely wrong.

Objection from Mr Neil Wright, Senior Policy Advisor, Alcohol and Other Drug Programs, Department of Health:

- 10) Section 47F(1)(b) provides that a person may lodge an objection to an application for variation of licence conditions. Mr Wright is an employee of the Department of Health and has standing to lodge an objection pursuant to Section 47F(3)(e) of the Act. His objection is dated 21 June 2012 and was received within the prescribed time limit for objections.
- 11) Mr Wright objects to the application on the grounds that an extension of alcohol trading hours will contradict the Northern Territory Government's policy of reducing alcohol related harm by increasing alcohol accessibility and availability. He also states that no increase in trading hours for licensed premises in the Waterfront Precinct should be considered until Licensing, Regulation & Alcohol Strategy undertakes a liquor density study for that area.
- 12) Mr Wright also submits that the earlier opening time for the sale of alcohol is not justified in an area marketed as a family friendly space. He suggests there is no justification for increased trading hours apart from an increase in revenue for the Licensee and that the extension of trading hours will not enhance the amenity of the area. Mr Wright also notes that there are already a number of premises trading from 10.00 am daily that are within walking distance of Fiddler's Green.

Applicant's Response to Objections:

- 13) By letter dated 13 July 2012 Mr and Ms Finestone responded to Mr Wright's objection. They stated that the suggestion that residents and visitors of the Waterfront Precinct should walk to earlier opening venues denies freedom of choice to those patrons and would steer them away from the Waterfront Precinct. They noted that the primary business of Fiddler's Green is the provision of meals, with alcohol sale as their secondary business, and suggested that the Department of Health should be supporting licensed restaurants and cafes as an alternative to hotels and taverns.
- 14) Mr and Ms Finestone also submit that previous temporary variations allowing the sale of alcohol from 10.00 am at Fiddler's Green have not resulted in any complaints, anti-social behaviour or alcohol related incidents. They also note that Fiddler's Green has not been the subject of any complaints nor contributed to any alcohol related anti-social behaviour during its twenty-one months of operation and that anti-social behaviour and intoxication are not tolerated at the premises. They also note that the restaurant was recently acknowledged with a Gold Plate award.
- 15) Mr and Ms Finestone submit that 10.00 am is the presumed normal trading hour for licensed premises and it unreasonable to send locals and visitors to the Waterfront Precinct to Mitchell Street if they wish to purchase alcohol prior to 10.00 am. They conclude by

stating that noise will not be an issue if the alcohol trading hours were extended as they already open the premises from 8.00 am for breakfast, without the service of alcohol prior to 11.30 am. They also state that all staff employed at Fiddlers Green are RSA trained and the premises is operated as a hands on family run business.

- 16) Mr Wright was provided with a copy of the applicants' response to his objection and was not persuaded to withdraw the objection.

Consideration of the Issues

- 17) Mr Wright's objection relates to the amenity of the neighbourhood in which the Fiddler's Green restaurant is located and raises concerns in respect of the potential for the proposed extended trading hours to detrimentally impact on the family friendly nature of the Waterfront Precinct and the amenity of the surrounding area. His submission is therefore a valid ground of objection pursuant to Sections 47F(2)(a) and (b) of the Act.
- 18) It should be noted however that Mr Wright objection does not specifically refer to any particular aspects relating to the operation of Fiddler's Green that may raise specific and identifiable concerns. Rather the objection refers to research indicating that the granting of additional liquor licences per se has the potential to lead to harmful outcomes in terms of anti-social behaviour and alcohol related harm generally.
- 19) In all the circumstances, the appropriate course is for the Commission to conduct a Hearing to consider the objection lodged by Mr Wright and to allow him the opportunity to expand on the potential for harm that may arise should this specific application to extend the trading hours for the Fiddler's Green premises be approved.

Decision

- 20) The Commission has determined that the objection lodged by Mr Neil Wright, Senior Policy Officer, Alcohol and Other Drug Programs, is valid in terms of the requirements of the Act and determines, pursuant to Section 47I(3)(c)(ii) of the Act, that the Commission must conduct a Hearing in relation to the objection.

Philip Timney
Legal Member

21 August 2012