

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Fiddler's Green
Applicant:	Finsio Pty Ltd
Dual Nominee:	Mr Geoffrey Finestone Ms Siobhan Finestone
Licence Number:	80818238
Proceeding:	Application for a Variation of Liquor Licence Pursuant to Section 32A of the <i>Liquor Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr John Brears Mr Wally Grimshaw
Date of Hearing:	15 October 2013
Date of Decision:	Mr Geoffrey Finestone Mr Terry O'Neill, Deputy CEO, Darwin Waterfront Corporation Ms Kay Withnall, Resident Inspector Shane McCorkell for the Director of Licensing

Background

- 1) Finsio Pty Ltd, through its Directors Mr and Mrs Finestone, have made application under Section 32A of the *Liquor Act* ("the Act") for a variation to extend the trading hours of the Alfresco Area of Fiddler's Green from 11.00pm until 11.30pm. The applicant advised that the purpose of this application was to bring the Alfresco Area licensed hours into line with those of the internal area. Current liquor licence hours for Fiddler's Green are from 10.00am to 11.30pm seven days a week for the internal area with the Alfresco Area having the same opening time but only extending to 11.00pm of an evening seven days a week.
- 2) Two objections were lodged following the advertising of the application and these were from Ms Kay Withnall, a resident of Wharf One and Mr Terry O'Neill, Deputy CEO, Darwin Waterfront Corporation ("DWC"). The Decision of the Chairman of 12 September 2013 "*determined that the submissions lodged by Ms Withnall and Mr Terry O'Neill of DWC are valid and require a Hearing pursuant to Section 471(7) of the Act*".

Hearing

- 3) Mr Finestone outlined the purpose behind the application to extend the trading hours of the Alfresco Area and bring them into line with the trading hours permitted by his licence for the internal area of the On Licence. He explained to the Hearing that the application was not made lightly. It was designed for the smoother running of the business and for people to vacate the premises at closing time in an orderly and less disruptive fashion.

- 4) He explained that under the current trading hours, patrons dining and drinking in the Alfresco Area are moved into the internal area at 11.00pm and then moved out at 11.30pm, at the conclusion of trading hours. He advised the Commission that this movement of people into the internal area and then back out on closing creates disruption and provides undue disturbance to his clients.
- 5) He informed the Hearing that when people are asked to move from outdoors into the internal area, noise and disruption results with many people determining to leave their friends and acquaintances at this point rather than being relocated. The farewells and goodbyes resulting from this practice adds to noise.
- 6) In responding to a question from Mr O'Neill, the applicant advised that if the extra half hour for trading in the Alfresco Area was granted it could diminish noise as currently the movement of his clients into the indoor area is accompanied by the movement of furniture and louder conversations as people move around.
- 7) Ms Withnall advised that she lived at Wharf One above a gap in the roof between Fiddler's Green and Chow! A Taste of South East Asia. She explained that there is no impediment to the noise she receives at her premises unlike the areas further along the wharf which have roof canopies which provide a barrier to noise to the units above.
- 8) She explained that her preference was to have her windows opened to take advantage of the breezes and fresh air. She explained that she would put up with noise until 11.00pm of an evening which would now be extended to 11.30pm if the application is approved.
- 9) After questioning from Commissioners, Ms Withnall explained that her unit lies above the gap between Fiddler's Green and Chow! A Taste of South East Asia and that her experience was where the alfresco area roof extends out from the main building, ninety percent of the noise is cut out by this roof.
- 10) Mr O'Neill outlined the key objectives of the DWC in maintaining a mix of users at the Waterfront in a family friendly environment. Based on these objectives DWC had established the Darwin Waterfront Liquor Guidelines ("the Guidelines") with the latest Guideline developed in April 2013. These Guidelines deal with, amongst other things, noise and closing time of licensed premises. He advised that under the Guidelines, Waterfront buildings that have residential apartments above the licensed premises, licence hours should be limited to 11.30pm with outdoor areas limited to 10.30pm.
- 11) Mr Finestone then summed up his application by advising that some other licensed premises and restaurants in the Waterfront area have longer evening trading hours than he is applying for and beyond those outlined in the DWC Guidelines. He explained that his concept of Fiddler's Green was to provide for a mix of clients, consistent with the key objectives of the DWC. He explained that his turnover was based on two thirds food sales and one third drink sales.
- 12) Mr Finestone agreed that a continuous roof over the alfresco areas of his business and Chow! A Taste of South East Asia would abate the noise issue as raised by Ms Withnall.

Site Inspection

- 13) The Commission adjourned to undertake an inspection of the area and during this inspection they were shown the locality of Ms Withnall's residence. Mr O'Neill also advised during the site visit that the Development Consent Authority had initially approved a development of the Wharf One area which included a continuous canopy, but that the developer, the TOGA Group, had later sought and was granted a variation to provide a break in the roof consistent with what is now in situ.

Consideration of the Issues

- 14) Based on the evidence provided to the Commission, it appears that Mr Finestone operates a business that provides for a large variety of clientele and does so in a manner that attempts to minimise any noise disruption to the residential tenants in the complex. He submitted to the Commission that the current practice of moving patrons from the Alfresco Area into the internal area late at night caused patron disruption and resulted in noise.
- 15) Mr Finestone also pointed out that some other licensed restaurants and premises in the Waterfront area had later licences than the licence he was applying for.
- 16) Ms Withnall admitted during her evidence that operators of Fiddler's Green had attempted to keep noise down and minimise disruption to her.
- 17) Mr O'Neill pointed out that the variation sought by the applicant was not consistent with the Guidelines issued in April 2013.
- 18) Following inspection and discussions with parties to the Hearing, the Commission is reasonably confident that should the developer extend the alfresco roof canopy to join the area between Fiddler's Green and Chow! A Taste of South East Asia, the noise concerns raised by Ms Withnall would largely be dealt with.
- 19) Mr O'Neill indicated that he agreed on the impact of an extended roof and the Commission surmises that his objection would be lessened if this noise attenuation measure was to be provided.
- 20) In weighing up the pros and cons of the application the Commission is persuaded that the current movement of people from the Alfresco Area to the internal area does cause noise and disruption. If the application is granted, without an extension of the roof it could cause added inconvenience to Ms Withnall, although in this instance it is only thirty minutes extra time. It is also noted the current practice of movement of patrons does generate a degree of unacceptable noise which would be avoided if the extra half hour trading was granted.
- 21) The Commission considers that closure of liquor service at Fiddler's Green at 11.30pm is not unreasonable. The Commission is also cognisant that an extension of the roof by developers TOGA Group, would likely satisfy Ms Withnall and to a degree satisfy the issues raised by Mr O'Neill.
- 22) The Commission has therefore determined to grant the application to allow for trading in the Alfresco Area until 11.30pm in line with that of the internal area of Fiddler's Green.

- 23) While not being able to require the construction of a roof over a non licensed area, the Commission has determined to write directly to the developer, TOGA Group, urging their consideration of an extension of the alfresco roof canopy to abate noise rising to apartments above, including that of Ms Withnall.

Decision

- 24) The Commission hereby grants an extension of licensing hours for the Alfresco Area of Fiddler's Green to 11.30pm, in line with that of the internal area.
- 25) The Commission has also determined to write to TOGA Group and to incorporate that letter into the Decision of the Commission to provide argument for and some pressure for the construction of an extension of the alfresco roof canopy to be undertaken.

Richard O'Sullivan
Chairman

12 November 2013