

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	<b>Fiddler's Green</b> Wharf One Darwin City Waterfront Kitchener Drive Darwin NT 0800
<b>Licensee/Applicant:</b>	Finsio Pty Ltd
<b>Licence Number:</b>	80117506
<b>Proceedings:</b>	Application for Variation of Licence Conditions
<b>Members:</b>	Mr Richard O'Sullivan, Chairman Mr Philip Timney, Legal Member Mr Wally Grimshaw
<b>Date of Hearing:</b>	4 April 2012

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## Background

- 1) Fiddler's Green (FINSIO PTY LTD) made application in correspondence dated 12 February 2012 for a variation of licence condition to:

- (a) Vary alcohol trading opening hours from 11:30am seven (7) days a week to 10:00am seven (7) days a week, and

- (b) Allow the playing of easy listening music in the alfresco area.

- 2) Following consideration of the matter by three Commissioners of the Northern Territory Licensing Commission ("the Commission"), a decision was conveyed to Fiddler's Green on the 11 April 2012. This decision is outlined below:

*Commission determined to refuse the application. Commission noted that the premises hold a restaurant licence, not a tavern licence. The Commission also has concerns regarding licence creep and the previous objections of neighbours.*

*Commission noted that the alfresco roof is now lined and the gap between the roof and the main building has been filled and determined to approve the playing of easy listening music in the alfresco area.*

- 3) In making this determination, the Commission took into account the background to the initial decision to grant an on licence for a Family owned and operated restaurant. Leading up to that decision, the Commission had convened a Hearing on the 19 May 2010 which was to consider Fiddler's Green original application for a tavern liquor licence. During that Hearing, the Commission noted that in response to objections, particularly those from neighbourhood residents, Mr Finestone modified the application to that of a restaurant with an on licence. This was recorded in a Decision of 18 June 2010 as follows:

*"The applicant advises that the proposed licence hours have been amended in response to objector concerns. This applicant is now seeking a liquor licence from 11:30 pm seven (7) days a week, whereas previously the application sought 10:00am to 11:30pm Sunday to Thursday and 10:00am to 01:30am (the following day) Friday and Saturday."*

*The applicant has amended the licence application from that of a tavern to that of a restaurant with an on licence.*

- 4) Further, the Decision of the Commission stated:

*The amendments proposed by the applicant, which include a concept and licence change, revised hours...meet the majority of the objections submitted against the earlier proposed Tavern Licence.*

- 5) It was on this basis that the Commission determined to grant a liquor licence with a category of a restaurant with an on licence with alcohol sale to commence from 11:30am seven (7) days a week.

## **Consideration of the issues**

- 6) The variation Fiddler's Green has recently sought to allow commencement of earlier sales of liquor was not objected to by the Darwin Waterfront Corporation in correspondence of 8 March 2012 based on "a six (6) months trial period to enable monitoring of any adverse effects within the precinct". The correspondence from the Darwin Waterfront Corporation sought that the monitoring of the impacts be undertaken with Commission determination of how impacts were to be assessed and how a review would be conducted at the end of the trial period.
- 7) In the Commission view, the comments made by the Darwin Waterfront Corporation were strictly limited to a six (6) months trial period. The nature of the variation, the views of the major objectors of the initial application, that is the neighbourhood residents, were not sought or obtained as part of the process of the most recent application. As the group are significant stakeholders in any licence variation, the Commission feels some obligation to be aware of their views on such a matter.
- 8) It would give the Commission comfort in any future application for variation of licence hours if the views of nearby residents were able to be taken into account. Therefore, while the Commission rejected the most recent application, it does not permanently close off the option of reconsidering the matter under circumstances where the application is publicly advertised.
- 9) Section 32A (2) and (3) of the *Liquor Act* ("the Act") state in relation to licence variation applications:

*"(2) If the Commission considers it to be in the public interest, the Commission may conduct a Hearing in relation to the application whether or not the applicant has requested a Hearing.*

*(3) If the Commission decides to conduct a Hearing, the Commission must require the applicant to cause notice of the application to be published:*

*(a) In a newspaper or newspapers nominated by the Commission; and*

*(b) Within the period specified by the Commission."*

Following this process the Commission will have a more comprehensive understanding of any community concerns over potential harm.

- 10) It would be up to the applicant to determine how the new conditions sought are to apply. A variation sought could be for trading with a liquor licence under the following or other options:
- 10:00am to 11:30am trading with a meal;
  - 10:00am to 11:30am trading on Saturday, Sunday and public holidays with a meal;

- 10:00am to 11:30am trading without a meal seven (7) days a week.

11) It would also be up to the applicant to include, should the applicant wish to do so, provision for the monitoring of any outcome as part of the application. Such monitoring could be determined by the Director of Licensing and cover issues such as neighbourhood disturbance and community harm and be based on a specified period of time.

## **Decision**

12) The Commission has formally rejected the current application for variation of licence hours as per its decision conveyed to the Licensee on 11 April 2012. However, as outlined above, the Commission is not immutably opposed to a licence variation but it would require consideration of the views of the neighbourhood residents and possibly Police and Health officials, before making a determination on the matter. The Commission therefore is firmly of the view that it is in the public interest that should the applicant wish to re-apply for variation of liquor trading hours that such application is required to be publicly advertised. The outcome of this advertisement in terms of lodgement of valid objections will determine whether a Hearing is required to consider the application.

Richard O'Sullivan  
Chairman

16 May 2012