

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Chow! A Taste of South East Asia
Applicant:	Happy Mekong Pty Ltd
Nominee:	Mr Jason Hanna
Licence Number:	80518216
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:	29 October 2013
Appearances:	Mr Jason Hanna Mr Terry O'Neill, Deputy CEO, Darwin Waterfront Corporation Ms Kay Withnall, Resident Inspector Jodi Kirstenfeldt for the Director of Licensing

Background

- 1) Mr Jason Hanna, Director of Happy Mekong Pty Ltd, has applied pursuant to Section 32A of the *Liquor Act* ("the Act") for a variation of licence conditions for the premises trading as Chow! A Taste of South East Asia situated at Wharf One, 19 Kitchener Drive, Darwin.
- 2) The applicant has sought seven day a week trading from between 10.00am to 11.59pm. Currently the licence for Chow! A Taste of South East Asia provides for trading from 11.30am to 10.00pm seven days per week.
- 3) Following advertising the application there were objections made by waterfront resident Ms Kay Withnall, Mr Terry O'Neill, Deputy CEO, Darwin Waterfront Corporation ("DWC") and Acting Superintendent Michael Hebb of Northern Territory Police. By Decision of the Chairman of 4 September 2013 it was determined "*that the objections 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*". The objection from Acting Superintendent Michael Hebb was determined to be out of time and it was also noted that the applicant had not been forwarded an opportunity to respond to the specific matters raised in the Police objection, and therefore this objection was dismissed.

Hearing

- 4) Mr Hanna outlined to the Hearing that what he was seeking was a common-sense approach to liquor licence hours for his restaurant. He explained that he had taken over a failing business and stated that the limited trading hours of the licence contributed to this failure.
- 5) Mr Hanna explained to the Hearing that his patrons were not happy with getting a meal late, that is after 10.00pm, with no alcohol being able to accompany the meal purchased. He advised that he currently closes the kitchen at around 9.30pm as if it is open later, meals are then served without being able to be accompanied by alcoholic beverages.
- 6) Mr Hanna explained the background to his application which was initially to trade until 02:00am in the morning, normal restaurant hours for most restaurant hours in the Territory. He stated that since being aware of an application recently before the Commission for a variation of the liquor trading hours of Fiddler's Green, he was happy to follow what Fiddler's Green had applied for, which is for an 11.30pm close of the liquor licence for the total premise.
- 7) On questioning from the Commission he reaffirmed that he would be content with trading hours until 11.30pm for both the internal and Alfresco Areas.
- 8) Mr Hanna submitted that residents in the apartments above the restaurant and commercial areas at the Waterfront are included in his clientele and that he does not want to fight with them over noise or amenity disturbance issues. He further added that he was happy to let the Commission determine the opening hours for Chow! A Taste of South East Asia as long as opening hours were not beyond 11.00am and he offered no further submission on the opening hours issue.
- 9) He also advised at Hearing that he was not in any way seeking to have a commercial advantage over his neighbour, Fiddler's Green, in respect of trading hours.
- 10) Mr O'Neill outlined that he had met with Mr Hanna and explained the Darwin City Waterfront Guidelines ("the Guidelines") issued in April 2013. He advised that he had explained to Mr Hanna that the DCW would lodge an objection if the hours sought were beyond those Guidelines. Mr O'Neill advised the Commission that consideration needed to be given to the owners and occupiers of the residential units at Wharf One, including those immediately above Chow! A Taste of South East Asia.
- 11) He advised that the open plan design of the residential units were a feature in the original promotional and sales material and he explained that the large verandas of these premises were designed to facilitate indoor as well as outdoor dining. He expressed the view that residents should have the option of having their windows open and that noise from licensed premises below should be minimised.
- 12) Following Mr O'Neill's evidence there was a general discussion on the provision of a roof covering the alfresco areas of licensed premises. Mr O'Neill gave evidence that the initial Development Consent Authority ("DCA") approved plans for the Wharf One area, including sections D1 and D2, provided for a continuous roof canopy over what are now the alfresco areas of Fiddler's Green and Chow! A Tasted of South East Asia. He advised that there was subsequently an

amendment approved by the DCA which removed the requirement to have a continuous roof over the alfresco areas.

- 13) Some discussion then took place over the desirability of extending the roof over the gap between Fiddler's Green and Chow! A Taste of South East Asia to prevent noise rising to apartments above.
- 14) Ms Withnall, who had made objection to the application, advised that she did not have a problem with Chow! A Taste of South East Asia as it is currently run. She did, however, object to the granting of a liquor licence until midnight. She also stated that she would be happy with the trading hours to be in line with those of Fiddler's Green.
- 15) She advised that she had a balcony above the open area between the two restaurants and that this open area readily allowed for the transmission of noise up to her unit.

Consideration of the Issues

- 16) The Commission noted that Mr Hanna, in his submission during the Hearing, stated that he did not want hours beyond those applying to his neighbour, Fiddler's Green. Mr Hanna also advised the Commission that while he had applied for a 10.00am opening time, he would accept an opening time of 11.00am.
- 17) The Commission notes that in relation to opening hours of Fiddler's Green that these hours commence at 10.00am but the Commission also noted that Fiddler's Green had a more liberal licence category of an "On Licence" whereas Chow! A Taste of South East Asia had a "Restaurant" licence.
- 18) The Commission is aware of the Guidelines which seek to have trading hours restricted to 10.30pm for alfresco areas and 11.30pm for internal areas and with noise emitted to be kept at a minimum to avoid disturbance to the residents above. Opening hours are not addressed in these DWC Guidelines and the Commission received no submission from objectors in terms of licence commencement hours.
- 19) Noting that Mr Hanna during the Hearing advised that he would accept 11.00am commencement of liquor trading, the Commission is persuaded to extend the opening hours for his licence from the current 11.30am to 11.00am.
- 20) In relation to the closing time the Commission has recently considered an application by Fiddler's Green where it sought an extension of trading for the Alfresco Area to 11.30pm to match that allowed under its licence of 11.30pm in the internal area. The Commission, in considering the application currently before it, has determined to keep its approach consistent with respect to the two premises in terms of liquor service closing times.
- 21) The evidence of Mr O'Neill and Ms Withnall largely related to noise abatement issues and both had agreed that should the roof that extends over the alfresco area of Fiddler's Green and Chow! A Taste of South East Asia be extended to cover the walkway in between, noise permeating to the units above would be considerably lessened.
- 22) The Commission therefore is inclined to grant an extension of evening trading hours to 11.30pm for both the internal and alfresco areas of Chow! A Taste of

South East Asia. At the same time the Commission has determined to write to the TOGA Group, the developers of the Waterfront complex, to urge that they extend the roof canopy coverage between the two licences to prevent noise rising to the units above, including to that of Ms Withnall's residence.

Decision

- 23) The Commission hereby grants an extension of trading hours to the restaurant, Chow! A Taste of South East Asia, to allow liquor sales commencing at 11.00am extending to 11.30pm seven days per week.
- 24) The Commission has also determined to write to the TOGA Group to urge the development of a continuous roof canopy between the two licensed premises, noting that a similar letter has been written in respect of the recent application by Fiddler's Green. This letter is to form part of the Decision on the application.

Richard O'Sullivan
Chairman

13 November 2013