

# Northern Territory Licensing Commission

## Decision on whether Objections will proceed to Hearing

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<b>Premises:</b>	<b>Fiddler's Green</b> Tenancy D3, Wharf One Darwin City Waterfront Darwin NT 0800
<b>Applicant:</b>	Finsio Pty Ltd
<b>Dual Nominee:</b>	Mr Geoffrey Finestone and Ms Siobhan Walsh
<b>License Number:</b>	80818238
<b>Objectors:</b>	Mr Pat Coleman, Darwin Waterfront Corporation Mr Andrew Moo Ms Dianna Richards
<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
<b>Date of decision:</b>	24 January 2011

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### Summary of Decision

That the Commission hold a Hearing in respect of the objections received from:

- Mr Pat Coleman, CEO, Darwin Waterfront Corporation
- Mr Andrew Moo, resident, Darwin Waterfront
- Ms Dianna Richards, resident Darwin Waterfront

### Background

- 1) On 11 November 2010, Finsio Pty Ltd applied to vary the licence conditions of Fiddler's Green, located at Tenancy D3, Wharf One, Darwin City Waterfront, Darwin, NT 0800 ("the Application"), pursuant to Section 32A of the *Liquor Act* ("the Act")
- 2) The Application was advertised in the NT News on Wednesday 17 November 2010 and Friday 19 November 2010.
- 3) The advertisement was as follows:

*Finsio Pty Ltd, hereby give notice that it has applied to the Northern Territory Licensing Commission for a variation of licence conditions for the premises, Fiddler's Green, Liquor Licence (number 80818238), located at 19 Kitchener Dr, Darwin, NT, 0800.*

*Variations sought are to*

- (a) Seek an extension of trading hours to allow the sale of liquor from 10:00 hours to 23:30 hours, seven days per week. The current trading hours of the venue are 11:30 hours to 23:30 hours seven days per week; and*
- (b) include the following new conditions in the liquor licence:*

- *Low key, easy listening music to be allowed to be played in outdoor alfresco dining area.*
- *Guests of corporate functions, cocktail parties, etc. to be allowed to stand in the alfresco dining area if prior notice provided to the Director of Licensing for each event.*

*The premises other licence conditions will remain unchanged.*

*This is the first notice of application. The notice will be published again in the Northern Territory News on Friday, 19 November 2010.*

*The objection period is deemed to commence from Friday, 19 November 2010.*

*Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the extension of trading hours 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 17th Day of November 2010.*

- 4) *Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice, namely on or before 20 December 2010.*
- 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 -*

***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*
- (b) an application for a variation of the conditions of a licence, as notified under Section 32A*
- (c) an application for the substitution of other premises for the premises specified in a licence, as notified under Section 46A*
- (d) an application for approval to make a material alteration to licensed premises, as notified under Section 119*

*(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) Section 47F(1)(b) provides that a person or organisation may object to an application for variation of licence conditions under Section 32A of the Act.
- 7) Turning to the specifics of the objections lodged:

**Objection from Mr Pat Coleman, CEO, Darwin Waterfront Corporation (DWC):**

- 8) The DWC has standing under Section 47F(3)(e) of the Act to lodge an objection, being the public authority responsible for public amenities in the Darwin Waterfront Precinct. Objection letters were received from Mr Coleman on 19 November 2010 and 20 December 2010. Both were received within the objection period.
- 9) In his letter of 19 November 2010, Mr Coleman strongly objects to the application to extend the trading hours for the premises on the basis the extension is not consistent with the DWC's Liquor Guidelines. Mr Coleman states that extended hours will skew the premises towards the consumption of alcohol and detract from the family friendly environment of the precinct. Mr Coleman also objects on the grounds the extension of hours will impact on residents in close proximity, particularly through noise and smoke disturbance.
- 10) Mr Coleman also notes that the Licensee is currently not opening for breakfast from 7.00 am to 11.30 am, and the application for an extension of hours represents a further move away from the approved use of the premises as a family friendly themed restaurant.
- 11) Mr Coleman notes that it is unclear as to whether the extension of hours is intended to apply to the al fresco area and notes that the DWC's Liquor Guidelines recommend the closure of al fresco areas at 10.30 pm, which is earlier than the current permitted hours for the Fiddler's Green al fresco area. If the intention is to further extend the trading hours for the al fresco area then the objection extends to that component of the Application as well.
- 12) On behalf of DWC, Mr Coleman also objects to the application to provide entertainment (music) in the al fresco area. He states that this would contravene the DWC's Corporate Guidelines that require recorded music to be played only inside premises. Mr Coleman states that music in the al fresco area of the premises will interfere with the enjoyment of the public domain by visitors to the precinct and will have a negative impact on residents within the residential areas of the building.

- 13) Mr Coleman also objects to the Application in respect of the change to licence conditions to accommodate corporate functions in the al fresco area on the basis the proposal is not in accordance with the DWC's Liquor Guidelines. He notes that functions of that type are, by nature, noisy and likely to have a detrimental impact on the quiet enjoyment of the precinct by residents and visitors alike. Mr Coleman also notes that the combination of high patron numbers and the focus on alcohol consumption at such events increases the risk of glass containers being transported outside the licensed premise and into the public domain area.
- 14) Mr Coleman notes that a variation of licence conditions to allow for corporate functions of the type envisaged represents a further divergence from the approved use of the premises as an on-licence restaurant and themed bar.
- 15) In his further letter of objection, dated 20 December 2010, Mr Coleman notes that the application for variation of conditions has been lodged less than six months after the Hearing into the grant of licence in which issues of noise, operating hours and the concept of the premises were considered. Mr Coleman states that the current Application is an attempt by the Licensee to incrementally change the concept and nature of the premises. He also notes that the Application appears indifferent to the DWC's Liquor Guidelines.
- 16) Mr Coleman's objection also alleges breaches of the current licence conditions, including the requirement to serve breakfast between 7.00 am and 11.30 am. He states that at present the premises do not open for trade until approximately 10.00 am, evidencing a focus on alcohol sales rather than a family restaurant environment. He states that an extension of trading hours will shift the focus of the premises further towards alcohol consumption and away from the approved use of the premises.
- 17) Mr Coleman also raises the issue of security of the premises and states that, if active security is actually being employed at the premises, it is ineffective. He cites an incident on 5 December 2010 when the security service engaged by DWC noted seventeen persons leaving Fiddler's Green carrying alcoholic drinks in stubbies and glasses, with broken glass ending up in the Palm Grove. Mr Coleman states that this is the type of behaviour that the DWC's Liquor Guidelines are intended to prevent.

#### **Objection from Mr Andrew Moo**

- 18) Mr Moo is a resident of Unit 123, Level 4, Building 1, Darwin Waterfront, the same building in which Fiddler's Green is located. Mr Moo has standing to lodge an objection under Section 47F(3)(a) and (b) of the Act and the objection was lodged on 25 November 2010, within the objection period.
- 19) Mr Moo objects to the variation of licence conditions on the basis the variations will convert what was intended to be a family friendly restaurant into a pub. He states that the variations seek to overturn the conditions on which the Commission granted a licence only six months ago. Mr Moo objects to the variation of conditions for the al fresco area on the grounds that noise from outdoor music will impact on the amenity of his residence and the allowance of corporate functions is not consistent with the concept proposed for that area when the licence was granted.
- 20) Mr Moo also objects to the extension of trading hours, including the hours within which the al fresco area may trade, on the basis this component is in contradiction to submissions made by the Licensee at the previous hearing convened to consider the licence application.

#### **Objection from Ms Dianna Richards**

- 21) Ms Richards is the resident of Unit 117, Building 1, 19 Kitchener Drive, Darwin, the same building in which the subject licensed premises are located. Ms Richards has standing to lodge an objection pursuant to Section 47F(3)(a) and (b) of the Act. The objection was lodged on 18 December 2010, within the prescribed period.

- 22) Ms Richards objects to the Application on the basis the variations to licence conditions sought include issues that were addressed by the Commission during the hearing prior to the grant of the licence. She raises particularly the Commission's previous determination in respect of the concept of a family friendly restaurant, the requirement for 80% of patrons to be seated and the prohibition on entertainment in the al fresco area. She states that the changes proposed by the Licensee will exacerbate the existing noise nuisance to residents in the building. Ms Richards also refers to the noise restrictions imposed on residents by the DWC's guidelines and notes that the restrictions on residents are more onerous than those existing for Fiddlers Green.
- 23) Ms Richards notes that the premises do not presently have the appearance of a restaurant and that the number of patrons drinking without a meal gives the impression of a pub, not a family restaurant. She objects to the extension of trading hours on the basis it will affect the amenity of the neighbourhood and result in an extended period of disturbance to neighbours. She states also that the earlier trading hours now requested, from 10.00 am, are more appropriate for a tavern or pub and not a family oriented restaurant.
- 24) Ms Richards objects strongly to music being played in the al fresco area and notes that residents already suffer from the effects of noise from Fiddler's Green. She states that a lifting of the current ban on music outdoors would add to the noise levels already being experienced. Ms Richards notes also that the al fresco area is not totally covered and that noise impacts significantly on residents' enjoyment of their balconies. Ms Richards states that having to listen to the "choice of music selected by Fiddler's Green" will affect the amenity of the neighbourhood for residents and visitors to the waterfront precinct.

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

- 25) A response to the objections was received from the Dual Nominees by letter dated 7 January 2011. That response does not specifically refer to the three objections lodged but does address the issues raised as they apply to the three aspects of licence conditions that are sought to be varied.
- 26) The Nominees note that since opening Fiddler's Green has become a popular destination for locals and tourists alike and the venue has traded incident free over the busiest trading period of the year, an indication of the professional manner in which the premises are managed and operated.
- 27) The Nominees advised that the request for the earlier opening hours is to accommodate tourists that visit the waterfront precinct and passengers from cruise ships that dock in the morning. They note that the extension of the hours for the sale of liquor will have no impact on noise issues as the premises are already open for trade at 10.00 am, without alcohol sales.
- 28) In respect of the request to allow entertainment (music) in the al fresco area, the Nominees state that that the waterfront guidelines are inconsistent and music is allowed "in every other licensed area within the public domain", including at the licensed premises closest to Fiddler's Green. They also note that no noise complaints have been lodged with the Commission or TOGA in respect of either Fiddler's Green or the neighbouring licensed premises, indicating that the music being played in the al fresco area of the neighbouring premises has no noise impact on residents.
- 29) The Nominees state that they have had many requests to host corporate functions, both from users of the Darwin Convention Centre and from the Darwin public. They note that the al fresco areas within the Darwin Waterfront area are designed to showcase the waterfront precinct and that, when properly managed, corporate events would have no negative impact on the waterfront community.

## Determination

- 30) The objection from Mr Coleman on behalf of DWC is valid in terms of the grounds of objection specified in Sections 47F(a) and (b) of the Act and requires a Hearing.
- 31) Mr Moo's objection concerns the potential impact of the proposed licence condition variations on the amenity of the neighbourhood in which the licensed premises are located, including the amenity of residents of the waterfront precinct. The objection is valid in terms of the grounds of objection specified in Sections 47F(a) and (b) of the Act and requires a Hearing.
- 32) The objection lodged by Ms Richards concerns the impact of the proposed licence condition variations on the amenity of the neighbourhood in which the licensed premises are located and within which Ms Richards resides. The objection is valid in terms of the grounds of objection specified in Sections 47F(a) and (b) of the Act and requires a Hearing.
- 33) On the basis of the matters set out above, I find that the three (3) objections lodged in respect of the application for variation to the licence conditions for Fiddler's Green are valid and require a hearing. Hearing briefs should be provided to all of the objectors prior to the hearing.

Philip Timney  
Legal Member

24 January 2011