

NORTHERN TERRITORY LICENSING COMMISSION

Decision on Whether Objections Will Proceed To Hearing

PREMISES:

FIDDLER'S GREEN

Tenancy D3, Wharf One
Darwin City Waterfront
DARWIN NT 0800

LICENSEE / APPLICANT: Finsio Pty Ltd

OBJECTORS:

Gina Harbrow
Adam Gough and Lucy Kilsby
Andrew and Jo Moo
Barb McInnes
Daniel Lee
Katrina and Christopher Darby
Glenn and Tracey Dalli
Scott White
Kellie Morris
Ken and Sue Moffitt
KSM Superannuation Fund (Ken and Sue Moffitt)
Body Corporate Committee of Wharf One
Kerry and Gordon MacAulay
Ross and Maria Marriner
John Elferink, MLA
Northern Territory Police
Darwin Waterfront Corporation

LEGISLATION:

Sections 47F to 47I of the *Liquor Act*

DECISION OF:

Mr Richard O'Sullivan

DATE OF DECISION:

8 March 2010

Background

- 1) On 27 October 2009, Finsio Pty Ltd applied pursuant to Section 26 of the *Liquor Act* ("the Act") for a Tavern liquor licence to sell liquor at the proposed premises to be known as Fiddler's Green, located at Tenancy D3, Wharf One, Darwin City Waterfront, Darwin, NT 0800.
- 2) The application was advertised twice in the Northern Territory News on Wednesday 11 November 2009 and Friday 13 November 2009. Copies were also forwarded to the Alcohol and Other Drugs Program, Northern Territory Police, Development Consent Authority and Darwin Waterfront Corporation for their comments. The advertisement was as follows:

FINSIO Pty Ltd, HEREBY GIVE NOTICE that we have applied to the Northern Territory Licensing Commission for a Liquor Licence to sell liquor from the premises located at Tenancy D3, Wharf One, DARWIN CITY WATERFRONT NT 0801.

PROPOSED TRADING DETAILS for the sale of liquor are as follows:

- *The proposed business to be conducted on the premises will be a Tavern, Victorian style facility that will include meals and light entertainment, with an alfresco area under the front awning.*
 - *Liquor may be sold for consumption on the premises between the hours of:*
 - *10:00 to 23:30 – Sunday to Thursday.*
 - *10:00 to 01:30 the next day – Friday and Saturday.*
 - *Breakfast to be available from 07:00 to 11:00, No alcohol to be sold between 07:00 and 10:00.*
 - *Entertainment to be situated internally and be 'easy listening'.*
 - *Special condition for extended trading hours to 01:30 the next day on, Thursday prior to Good Friday, Darwin Cup Day, Australia Day, Christmas Eve and New Years Eve.*
- 3) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice. An objection must be lodged with the Director within thirty (30) days after publication of the last advertisement - namely by Tuesday 15 December 2009. In this instance the Chairman extended the objections cutoff date to the close of business on 21 December 2009. Objections were received from the following persons:
 - Gina Harbrow – objection dated 2 December 2009 and was received within time.
 - Adam Gough and Lucy Kilsby dated 9 December 2009 and was received within time.
 - Andrew and Jo Moo dated 11 December 2009 and was received within time.

- Barb McInnes dated 16 December 2009 and was received within time.
- Daniel Lee dated 15 December 2009 and was received within time.
- Katrina and Christopher Darby dated 17 December 2009 and was received within time.
- Glenn and Tracey Dalli dated 18 December 2009 and was received within time.
- Scott White dated 19 December 2009 and was received within time.
- Kellie Morris dated 20 December 2009 and was received within time.
- Ken and Sue Moffitt dated 20 December 2009 and was received within time.
- KSM Superannuation Fund (Ken and Sue Moffitt) dated 20 December 2009 and was received within time.
- Body Corporate Committee of Wharf One dated 20 December 2009 and was received within time.
- Kerry and Gordon MacAulay dated 20 December 2009 and was received within time.
- Ross and Maria Marriner dated 12 December 2009 and is within time.
- John Elferink, MLA undated. Mr Elferink's submission was received on 23 December 2009, however there is evidence of the correspondence having been posted on 17 December 2009 and a determination is made that this objection was lodged within time.
- Northern Territory Police dated 18 December 2009 and is within time.
- Chief Executive Officer, Darwin Waterfront Corporation dated 20 November 2009 and was received within time. A subsequent letter from the Chairman of the Darwin Waterfront Corporation was sent on 21 January 2010 which is not within time and therefore cannot be considered as a valid objection pursuant to Section 47F(4)(d) of the Act. However, given the role of the Darwin Waterfront Corporation in the creation of the overarching concept of the Waterfront Precinct and the Corporation's ongoing role in the management and development of the Precinct, it could be valid for the Commission at Hearing to hear further from the Chairman of the Corporation, not in terms of an objection, but to be informed of the concept, marketing and makeup of the Precinct relating to its mixture of public, resident and business usage.

- 4) The grounds for or the nature of the objections must meet the requirements of Section 47F(2) of the Act, which defines the content or substance for an objection to be valid. Section 47F(2) states:
- (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.*
- 5) Additionally, Section 47F(3) of the Act lists the categories of persons who have standing to object to an application such as this. It provides -
- (3) Only the following persons, organisations or groups may make an objection under subsection (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).*

Objections

- 6) The letters of objection have been assessed against the criteria applying under Section 47F(3) of the Act and the Commission finds most objectors have standing as residents in the immediate neighbourhood, while John Elferink MLA has standing as his electorate works covers the neighbourhood. Northern Territory Police have standing in their own right under Section 47F(3)(c). In terms of content of objections having standing under Section 47F(2), the Commission finds as follows (noting that grounds of objection are in summarised format):

Gina Harbrow

- 7) The objection provided by Gina Harbrow is on the grounds of:
- Proposed hours of operation of the premises.

- Likely noise emanating from the premises.
- Questioning of Police resourcing available.

Adam Gough and Lucy Kilsby

8) The objection provided by Adam Gough and Lucy Kilsby raises issues of:

- Smoke wafting up to the apartments above the proposed premises.
- Noise emanating from the premises.
- Hours of operation.
- General anti social behaviour around the area.
- Adequacy of security.

Andrew and Jo Moo

9) The objection provided by Andrew and Jo Moo raises the issue of:

- General impact on the quality of lifestyle of residents, in particular noise.

Barb McInnes

10) Barb McInnes' objection raises the following issues:

- General ambience and amenity.
- Security.
- Potential for drunken behaviour in and around the area.
- Proposed patron numbers for the premises.
- Noise emanating from the premises.
- Proposed hours of operation.

Daniel Lee

11) Daniel Lee's objection raises the following issues:

- Security.
- Smoke.
- Noise.

Katrina and Christopher Darby

12) Katrina and Christopher Darby's objection raises the following issues:

- Impact on general ambience and amenity.
- Style of development.
- Large patron numbers.
- Noise.
- Smoke from cigarettes impacting on residents.
- Hours of operation.

Glenn and Tracey Dalli

13) Glenn and Tracey Dalli's objection raises the following issues:

- Noise.
- Patron behaviour.
- Security / control of behaviour in the area.

Scott White

14) Scott White's objection raises the following issues:

- Proposed size of the premises.
- Operating hours.
- Inconsistency with family nature of the area.

Kellie Morris

15) Kellie Morris' objection raises the following issues:

- Public safety.
- Disturbance to neighbourhood.

Ken and Sue Moffitt

16) Ken and Sue Moffitt's objection raises the following issues:

- Nature of licence to be granted.
- Size and capacity of the alfresco area.
- Late opening hours.
- Noise.
- Public safety.
- Potential for anti social behaviour.

KSM Superannuation Fund (Ken and Sue Moffitt)

17) The objection from the KSM Superannuation Fund raises the following issues:

- Type of licence applied for.
- Hours of operation.
- Premises noise.
- Public safety.
- Size and Patron number of the premises.

Jodie Williams, Secretary, Body Corporate Committee of Wharf One

18) The objection submitted by Jodie Williams on behalf of the Body Corporate Committee of Wharf One is based on a motion passed at the inaugural Body Corporate Meeting convened on Monday 14 December 2009 raises the following issues:

- Style of licence applied for.
- Proposed hours.
- Excessive noise from alfresco area.
- Adverse impact on outside pedestrian walkway.
- Public safety.
- Overall neighbourhood amenity.

Kerry and Gordon MacAulay

19) Kerry and Gordon MacAulay's objection raises the following issues:

- Proposed hours.
- Noise.
- Anti social behaviour.
- Public safety.

Ross and Maria Marriner

20) Ross and Maria Marriner's objection raises the following issues:

- Neighbourhood amenity.
- Noise.
- Hours of operation.
- Impingement on resident and public use of open space.
- Smoke emanating from the premises.
- Size of proposed development.
- Public safety.
- Inconsistency with pre sales marketing concept.

John Elferink MLA

21) John Elferink's objection raises the following issues:

- Submitted as an objection to the nature of the liquor licence applied for.
- Should approval be granted, the effects on residential tenants will not be insubstantial.
- Raises social order issues that states that the objection is not intended to enter into the issues that have been raised by tenants.

Northern Territory Police

22) The Northern Territory Police objection raises the following issues:

- Impact on amenity of neighbourhood.
- Security and public safety.
- Lack of sufficient information of proposed licence.
- Trading hours.
- Noise.
- Violence and neighbourhood disturbance.
- The Police submission states if a licence is to be granted Police preference would be for it to be limited to a restaurant licence, trading hours restricted from 10.00 am to 12.00 midnight.

Darwin Waterfront Corporation

23) The Darwin Waterfront Corporation objection raises the following issues:

- Not an objection, but raises comments on a number of operational matters including use of easement for alfresco dining, proposed hours, requirements to prevent anti social activity and to meet public safety needs.

Applicant's Response to Objections

24) The applicant advises that the business will have a clear family focus during daytime trading hours with a more mature clientele envisaged during the evening.

25) The applicant advises that the proposed licence hours have been amended in response to objector concerns. The applicant is now seeking a liquor licence from 11.30am until 11.30pm seven (7) days a week, whereas previously the applicant sought 10.00am to 11.30pm Sunday to Thursday and 10.00am to 01:30am (the following day) Friday and Saturday.

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

27) In terms of patron numbers the applicant advises that subject to fire and safety regulations he envisages around two hundred (200) patron capacity for the internal area. The applicant will reduce the patron numbers in the external (alfresco) area from one hundred and seventy six (176) to a maximum of one hundred and thirty two (132) if all seats are occupied.

28) The applicant states that the alfresco area will be clearly defined with no obstruction to the public footpath.

- 29) In the applicant's response to objections raised the applicant has undertaken that all patrons in the alfresco area are to be seated at all times with table service available at all times.
- 30) The applicant has advised of measures to address other issues raised by objectors such as noise attenuation, employment of security, use of CCTV and ordering transport by staff. These measures can be more fully outlined and tested at Hearing.

Determination

- 31) For an objection to have validity it must raise the adverse impact of the proposed licence in terms of the amenity of the neighbourhood and the health, education, public safety and social conditions in the community.
- 32) On the basis of this requirement I consider the objections raised by the following are valid and require a Hearing.

- Gina Harbrow
- Adam Gough and Lucy Kilsby
- Andrew and Jo Moo
- Barb McInnes
- Daniel Lee
- Katrina and Christopher Darby
- Glenn and Tracey Dalli
- Scott White
- Kellie Morris
- Ken and Sue Moffitt
- KSM Superannuation Fund (Ken and Sue Moffitt)
- Body Corporate Committee of Wharf One
- Kerry and Gordon MacAulay
- Ross and Maria Marriner
- Northern Territory Police

- 33) The following are not deemed valid objections for the reasons outlined below:

John Elferink MLA

- 34) Mr Elferink's submission refers to objections from residents and does not enter into specific reasons for objecting, other than to object to the nature of the licence application. His correspondence raises the issue of alcohol consumption and the levels of alcohol consumption in Darwin and its link to community problems.
- 35) He also raises the need to give deep thought to the application in view of the proposed location within a residential area.

36) It is the determination of the Commission that while the general amenity of the neighbourhood is mentioned and social conditions relating to the application are raised, the nature of this submission does not object on these grounds as required by Section 47F(2) of the Act.

37) For the reasons set out above Mr Elferink's submission is not a valid objection and I direct the Director of Licensing to inform him of this decision.

Darwin Waterfront Corporation

38) The submission received from the Chief Executive Officer does not constitute an objection as the submission states:

"The Darwin Waterfront Corporation generally supports the application subject to appropriate consideration of a number of operational matters, set out in Attachment 1 to this letter."

39) The correspondence then goes on to refer to noise, security and anti social behaviour and the need for the application to address these issues.

40) The comment that the Corporation "*generally supports the application*" defines the submission as not being an objection under Section 47F(2) of the Act.

41) For the reasons set out above the Darwin Waterfront Corporation's submission is not a valid objection and I direct the Director of Licensing to inform him of this decision. The Commission at Hearing, however, may wish to be informed by the Corporation of the overall philosophy behind the development and the envisaged usage of this Precinct, particularly in terms of its blend of public, residential and commercial elements referred to in paragraph 3) above.

Richard O'Sullivan
CHAIRMAN

8 March 2010