

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **FIDDLER'S GREEN**
Tenancy D3, Wharf One
Darwin City Waterfront
DARWIN NT 0800

LICENSEE / APPLICANT: Finsio Pty Ltd

ATTENDEES:

OBJECTORS:

Andrew and Jo Moo
Scott White
Ken and Sue Moffitt
KSM Superannuation Fund: Ken and Sue Moffitt
Body Corporate Committee of Wharf One: Diane
Richards and
Phillip LeCastro
Ross and Maria Marriner

APPLICANT:

Mr G Finestone , Director Finsio Pty Ltd
Ms S Walsh, Nominee

INVITEES:

Mr P Coleman, Darwin Waterfront Corporation
Mr T O'Neill, Darwin Waterfront Corporation

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Mr Philip Timney (Legal Member)
Mrs Jane Large (Member)

DATE OF HEARING: 19 May 2010

DATE OF DECISION: 18 June 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 ("the 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) Seventeen (17) objections were lodged against the proposal and in a decision dated 8 March 2010 the Chairman of the Licensing Commission found fifteen of the objections valid and two (2) not valid, namely submissions from John Elferink MLA and the Corporation.
 - 4) Further the Chairman noted the applicant's response to the objections which offered to alter the application as follows:

"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 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 on licence.

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.

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

- 5) On 10 March the Corporation made an application, pursuant to Section 47J of the Act for a review of the decision of the Commission Chairman to dismiss the Corporation’s objection to the liquor application for Fiddler’s Green.
- 6) In its decision of 7 May 2010 the Commission on Review stated that, having considered all the issues and the submissions made on behalf of the Corporation, it had reached the conclusion that nothing had been provided which would persuade it to overturn the Chairman’s decision of 8 March 2010, which found that the Corporation was not a valid objector to the Liquor Licence Application of Fiddler’s Green.
- 7) However, the Commission on Review determined that, in line with the Chairman of the Licensing Commission’s comments on 8 March 2010, an invitation in writing should be extended to the Corporation to attend, as a Licensing Commission witness, the hearings pertaining to the application for a liquor licence for the Fiddler’s Green premises at the Darwin City Waterfront.
- 8) In line with previous Commission practice the Objections Hearing was scheduled, closely followed by the Application Hearing, on the same day, namely 19 May 2010.

OBJECTIONS HEARING

- 9) At the commencement of the Hearing a letter dated 17 May 2010 from Northern Territory Police Fire & Emergency Services was tendered which stated that they did not intend to offer any further submissions in regard to the application. There were no concerns expressed regarding the proposed amended hours and noise. The patron numbers concerns had been partly addressed in the revised submission and it was considered by the applicant

that a Restaurant Licence, with all of the conditions commensurate with this type of licence, would be less likely to be problematic than a Tavern Licence.

10) Mr Pat Coleman, Executive Officer of the Corporation set out the overall philosophy of the waterfront development which was that all developments would be family friendly, of a high class and a mixture of residential, commercial, retail and entertainment outlets. He outlined the facilities provided to date, and addressed access and security issues in the area. Whilst Mr Coleman stated he had no issue with the overall concept, he foresaw problems arising from the granting of a liquor licence in the area as being noise, anti-social behaviour and broken glass.

11) Mr Finestone stated that the premises would form a meeting place for residents who are serious about having food supplied all day. He reiterated the revised proposal for the premises and in answer to questions from objectors gave the following assurances:

- The kitchen would be closed sometime between 9.30 pm and 10.00 pm.
- There would be no bi-fold doors and solid doors would be installed between the inside and the alfresco area. These doors would be closed when music is playing inside.
- There would be no amplification of music in any part of the premises and all music would cease at 11.00 pm.
- The alfresco area would be fully seated with waiter service and would close at 11.00 pm.
- He wanted the outside roof area to be extended to cover the total alfresco area of the premises but this had been prohibited and he proposed to install tables under umbrellas.
- There would be a designated smoking area where all smokers would be seated.
- Additional security would be employed if necessary.

12) Objectors Mr Moo, Mr Moffitt, Ms Richards and Mr Marriner presented their objections to the proposal which in the main related to the alfresco area and included concerns about the noise, smoking, closing times, size of uncovered alfresco area and the possibility that Fiddler's Green would become a drinking venue rather than a restaurant.

13) In answer to their objections Mr Finestone tabled Letters of Support from thirteen other residents in the neighbourhood and a Vipac Engineers Acoustic Report. The Commission directed that copies of the Acoustic Report should be made available to all objectors and allowed two weeks for them to provide any comment on the report.

14) The Acoustic Report recommended:

- Sound level limiting device be installed inside the tenancy, so that reverberant noise levels inside the restaurant with background music being played are limited to the acceptable sound levels.
- No speakers be installed outside the proposed tenancy.
- The glass doors be constructed of minimum 10mm toughened glass and fitted with appropriate acoustic seals and kept closed when music is played inside the restaurant.
- The louvers above the glazing be blocked off with minimum 1 layer 13 mm FRPB with all openings and interfaces properly blocked off and caulked.
- No deliveries should be taking place before 7:00 am.
- The delivery vehicles should be parked as close as practicable to the building façade in order to maximise the shielding provided by the building structure. Alternatively, the vehicles could be parked in Kitchener Drive with the goods transported to the proposed tenancy by trolleys,

15) Mr and Mrs K Moffitt supplied written comment on the acoustic report within the time allowed and stated that the report focussed on the area covered by a solid canopy and did not make an assessment of the noise from patrons outside the covered area but contained within the alfresco area under application. Also, the report assumed that the glazing in the residential apartments would be closed and did not take into account the noise on the balconies and in the bedrooms with open windows and doors.

APPLICATION HEARING

16) Mr Finestone, as Director of Finsio Pty. Ltd, provided company documents, financial statements, police checks, references and a schematic map of the premises. An unsigned and still in preparation lease for the premises was tabled and Mr Finestone undertook to provide the Commission with the final, completed signed copy of the lease when it became available.

CONSIDERATION OF THE ISSUES

- 17) Wharf One of the Waterfront Development has not been designed or portrayed as a residential only development. It has always proposed a more communal environment integrating residential apartments, restaurants, cafes, and other commercial and retail outlets. In this setting a degree of tolerance between the various occupants is required. Having said that, each occupant has a responsibility to ensure that their operations do not unnecessarily intrude on the well being of other occupants.
- 18) The amendments proposed by the applicant, which include a concept and licence change, revised hours and patron numbers and structural changes to the doors between the inside and alfresco areas, meet the majority of the objections submitted against the earlier proposed Tavern Licence. The residual objections mainly refer to the Alfresco Area of the premises and are clearly of concern to residents of the building housing the proposed Fiddler's Green restaurant. However the Commission notes that thirteen residents in the neighbourhood provided written support to the proposal.
- 19) The noise complaint focussed on the fact that under Body Corporate agreement there are noise curtailment measures such that for the residents of the building there is a 10:00 pm noise curfew and after that time any guests are required to leave the premises quietly. Whilst the revised hours of operation and number of patrons will reduce the hours of potential noise, the extension of the roof covering the alfresco area would have also restricted the transmission of the noise to other parts of the building. However, the Commission was advised by Mr Finestone that this extension has not been approved as it would spoil the aesthetics of the building and the applicant proposes the alternative of having umbrellas erected in the uncovered area. The applicant commissioned the acoustics report and will therefore take up its recommendations. The Commission notes that the lease to be signed by Finsio Pty Ltd has very strict noise conditions and these should be reflected in the conditions of any licence that is granted.
- 20) In regards to the complaint relating to the smoke emanating from the premises, the lessee is proposing a designated smoking area within the parameters of the Alfresco Area and will be required to meet the current legislative requirements pertaining to smoking in restaurants and bars.
- 21) The Commission is of the opinion that the concerns, that Fiddler's Green will become a drinking venue rather than a restaurant and this will result in anti social behaviour in the area, can be alleviated by including special licence conditions, which are in line with other restaurants with On Licence. Such conditions are:

- The concept of the premises will be a family owned and operated fully licensed restaurant with a relaxed atmosphere where comfortable conversation can be achieved. A venue providing quality food, beverages, service and civility.
- At all times the premises must have the appearance of a restaurant.
- There will be no advertising of the On Licence.
- In the Alfresco Area of the premises all patrons will be seated at low set tables and chairs and a waiter service provided.
- Inside the premises 80% of all patrons will be seated at all times.
- There will be no amplification of music on the premises and when there is music in the inner part of the premises the main doors will be shut.

22) The Licensing Commission believes that the granting of a Restaurant Licence with an On Licence which incorporates the licence conditions outlined above will meet the Darwin Waterfront Corporation's need for an appropriate balance between the mix of facilities, amenity and impact on future residents and mitigate the concerns of the current residents. Further, the Commission finds that the applicant has demonstrated that his financial resources, good reputation and previous experience in the hospitality industry meet the requirements for the granting of a liquor licence in accordance with Section 29 (2)(a) of the Act.

23) On the issue of licensing the alfresco area, the Commission is cognisant of resident concerns and has been informed that the applicant would like to extend the canopy to cover all of the licensed area. Whilst this is ultimately a matter to be determined between the lessor and lessee of the premises, the Commission is minded to only grant a licence where the canopy provides a noise attenuation cover. The Commission is of the view that the proposal for removable umbrellas is an inadequate solution. Should a noise attenuation cover be extended to cover the entire proposed alfresco area, then the licence area will be accordingly extended.

DECISION

24) The Commission, subject to sighting a signed lease, grants a Restaurant Licence with an On Licence to Finsio Pty Ltd for the premises of Fiddler's Green, Darwin City Waterfront, Kitchener Drive, Darwin NT 0800 with the following conditions:

- **Concept:** The premises will be a family owned and operated fully licensed restaurant with an internal dining area and an alfresco dining area which portray a relaxed atmosphere where comfortable conversation can be achieved. A venue providing quality food, beverages, service and civility.
- At all times the premises must have the appearance of a restaurant and there will be no advertising of the On Licence.
- **Hours of Operation:** 11.30 am to 11.30 pm seven days a week with the Alfresco Area closing at 11.00 pm each day. These hours are extended from 11.30 am to 2.00 am (the following day) on New Year's Eve.

No trading on Good Friday or Christmas Day.

Breakfast to be available from 07.00 am to 11.30 am, with no alcohol to be sold.

The kitchen will close between 9.30 pm and 10.00 pm.

- **Seating Arrangements:** Inside the premises 80% of all patrons will be seated at all times. In the Alfresco Area of the premises all patrons will be seated at low set tables and chairs and a waiter service provided.
- **Patron Numbers:** Subject to fire and safety regulations there will be a maximum of two hundred (200) patron capacity for the internal area and a maximum of one hundred and thirty two (132) in the Alfresco Area.
- **Alfresco Area:** The licensed external area is to be fully covered overhead with canopy providing noise attenuation for apartments situated above.
- **Entertainment:** Entertainment is to be allowed internally only and be 'easy listening' There will be no bi-fold doors and solid doors will be installed between the inside and the alfresco area. These doors will be closed when music is playing inside. There will be no amplification of music in any part of the premises and all music will cease at 11.00 pm.
- **Pedestrian Thoroughfare:** At no time will the structure or the operations of the premises impede upon the public footpath or the residents entrance and exit of the building.

- **Noise:** The Licensee must ensure that there is no excessive noise caused by the operations on the premises which affect the amenity of the neighbourhood. This includes ensuring the delivery of stock or removal of rubbish is at appropriate hours and that patrons, whilst on the premises or in the course of leaving the premises (including after close of trading), are not rowdy or noisy and do not cause any disturbance to the vicinity of the premises.

Richard O'Sullivan
CHAIRMAN

18 June 2010