

Northern Territory Licensing Commission

Decision on Whether Objections will Proceed to Hearing

Premises:	Ocean Fresh Shops D1 and D2 19 Kitchener Drive Darwin NT 0800
Applicant:	Choong Enterprises Pty Ltd
Nominee:	Ronald Choong
Licence Number:	80518216
Objectors:	Commander Kate Vanderlaan, Northern Territory Police Pat Coleman, Darwin Waterfront Corporation
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Richard O'Sullivan
Date of Hearing:	19 May 2011

Background

- 1) On 21 April 2011 Choong Enterprises Pty Ltd applied pursuant to Sections 32A and 119 of the *Liquor Act* ("the Act") for a change of Authority from a "Restaurant" Licence to an "On Licence" together with variations to liquor licence conditions and material alterations at the premises known as Ocean Fresh, located at Shops D1 and D2, 19 Kitchener Drive, Darwin. The material alterations involve the installation of a bar in the current display / servery area, installation of toilets and bi-fold doors to replace existing doors and windows. Variations to the licence conditions sought also include the right to hold functions involving people consuming drinks and snack foods whilst standing during the function event.
- 2) The Application was advertised in the NT Times on Friday 11 March 2011 and Wednesday 16 March 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

Liquor Act

1st Notice of Application for a Change of Authority, Variation and Material Alteration of Liquor Licence

I, Ronald Kheong Huat Choong, on behalf of Choong Enterprises Pty Ltd, Hereby Give Notice that I have applied to the Northern Territory Licensing Commission to change the Authority of the Liquor Licence from a "Restaurant" to an "On" Liquor Licence for the premises known as Ocean Fresh located at Shop D1, D2 Wharf One Retail Precinct, Kitchener Drive Darwin NT.

I hereby give notice that I have also applied for a Variation and Material Alteration to the existing Liquor Licence.

Proposed Variations Include:

Remove the Licence Conditions:

- *Liquor shall only be sold for consumption ancillary to a meal.*
- *Liquor to be sold only by way of wait staff to patrons who are seated at a table.*

Include the Licence Conditions:

- *This licence allows for one (1) quality restaurant and ancillary bar. The premises shall at all times have the predominant appearance of and shall trade principally as a restaurant.*
- *This licence allows for patrons to stand in the internal bar area. Service of liquor in this area need not be by wait staff. Snack foods must be available for food consumption within this space. High tables and bar stools are permitted in this area.*
- *All patrons within the alfresco areas must be seated in order to promote the restaurant concept. High tables or bar stools are not permitted in the alfresco area.*
- *All liquor service to internal and external dining areas (excluding the bar) must be by wait staff and all patrons must be seated.*
- *Consumption of liquor without a meal will not be advertised or promoted.*
- *The word "Bar" shall not be used in any advertising or signage*
- *The Licensee may from time to time utilise the entire licensed area as a function area.*

For functions that do not include the provision of a meal, snack foods are to be offered to all persons in attendance. "Offered" is to be interpreted as the actual offer of food by way of waitperson service to persons attending or by way of a buffet dedicated to the approved function.

Patrons are permitted to stand on the licensed premises during an organised function.

Proposed Material Alterations Include:

- *Alterations to the current servery area;*
- *Installation of male and female toilets; and*
- *Installation of bi-fold doors to replace the front entrance/exit doors and windows along the front wall.*

This is the first notice of application. The notice will be published again on Wednesday, 16 March 2011.

The objection period is deemed to commence from Wednesday, 16 March 2011. (date of publication of second notice).

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the grant of the licence 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, Licensing, Regulation and Alcohol Strategy, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 11th Day of March 2011.

- 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 Friday 15 April 2011.
- 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) Two letters have been lodged in response to the application and the applicant has provided a response to these letters pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing.

Objection from Commander Kate Vanderlaan, Northern Territory Police:

- 7) Section 47(3)(c) allows members of the Northern Territory Police to object to an Application. Commander Kate Vanderlaan is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c) and stationed at the Nightcliff Police Station. As such Commander Kate Vanderlaan is a valid objector.
- 8) Police have lodged an objection to the application on a number of grounds which they contend would adversely affect the amenity, public safety and social conditions of the neighbourhood in which the premise is located.
- 9) The Police submission maintains that the change of Authority of the premise from a Restaurant to that of an On Licence could promote the premise trading as a bar.
- 10) The objection raises the issue of the residents living directly above the licensed premises who would likely be affected if the premise was to operate as a bar. Further the Police submission maintains that the granting of this application could result in the Wharf Precinct becoming another nightclub similar to Mitchell Street.
- 11) The Police submission concludes by stating:

“Police are constantly attempting to curve anti-social behaviour, alcohol related violence and incidents occurring in and around licensed premises. Having yet another establishment as an “On” licence does not in any way assist Police in ensuring community safety, particularly where there is a mix of an entertainment and residential environment.”

Correspondence from Mr Pat Coleman, CEO Darwin Waterfront Corporation (“DWC”):

- 12) The Corporation has expressed concerns in relation to the application. It advises that the variations to allow patrons to stand during organised functions and consume alcohol is not consistent with the objectives of the Darwin Waterfront Corporation Liquor Guidelines issued in August 2010.
- 13) By decision of the full Commission in 2010 the Commission has agreed to take these Guidelines into account when assessing licence applications or applications for variations of existing licences.
- 14) Specific concerns of DWC are that the stand-up functions are likely to generate high noise levels which impact on the amenity of the public using the area and of residents within and above the premise.
- 15) The DWC also raises the concern that the concentration of patrons and patron density where alcohol is being consumed at events and parties increases the risk of glass being taken into the public domain and generally increase the likelihood of increased anti-social and noisy behaviour.
- 16) The correspondence from the DWC does not specifically object to the application but rather raises a number of concerns which the DWC has also expressed in response to other licence applications and applications for licence variation.

Applicant’s Response to Objections:

- 17) The applicant has responded to the correspondence from the Police and the DWC by advising that the renovations and licence variation sought are to reposition Ocean Fresh as an upmarket seafood restaurant.

- 18) The applicant advises that the material alteration involving the conversion of a seafood display area to a bar is to afford diners the option of consuming a pre-dinner drink at a designated bar area in the restaurant before being seated at a table to have a meal. The applicant advises the bar area only allows for six to eight diners standing at any time in addition to four high tables adjacent to the standing area.
- 19) Patrons would be able to order a drink at the bar and then move onto their table for consumption of the meal. At all times in the response to the objection from Police and correspondence from the DWC, the applicant has referred to patrons attending the bar as clients on the premises for the purpose of later consuming a meal. It is couched in terms of providing diners with an option to consume a pre-dinner drink within the licensed premises before being seated.
- 20) The response adds that the venue will not serve draught beer and advises it will cease serving alcohol at 11.30pm as per the current licence. The applicant maintains that given these conditions, it will not be presenting as a bar or nightclub for use by the public. (Note: The Commission is aware that the current licence only allows for the service of alcohol from 11.30am to 10.00pm, seven days a week.)
- 21) The material alteration sought to allow for the installation of bi-fold doors is to provide a feeling of open space, particularly for the Dry Season.
- 22) In relation to the Police objection, the applicant has submitted that some of the material within the objection is an over action in the context of what the applicant seeks to achieve. It reaffirms that the installation of a bar area is to provide diners with an ability to consume a pre-dinner drink. Any music would be background sound to help give effect to the concept of an up market restaurant.
- 23) The Commission is cognisant that the applicant does not refer to people being able to consume an alcoholic beverage without the consumption of a meal on the premises.

Consideration of the Issues

- 24) The Police objection was submitted on 11 April 2011 and is within time. The objection raises public amenity, safety and social conditions of the neighbourhood and is therefore valid pursuant to Section 47F(2) of the Act, therefore requires a Hearing.
- 25) The correspondence from the DWC raises concerns and refers to the need for consistency of the application with the Darwin Waterfront Corporation Liquor Guidelines.
- 26) In itself the material provided by the DWC does not constitute an objection and therefore does not require a Hearing, however, given the status of the DWC in establishing and controlling the general use of the Waterfront area, and given that it has established Guidelines for liquor licences, the Commission is of a view that the CEO or his representative should be invited to address a Hearing.
- 27) The purpose would not be to elaborate the concerns or to raise objection to the application but to inform the Commission of the overall concept of the Waterfront area in relation to activities and uses consistent with this concept.

Decision

- 28) The Commission has determined that the objection lodged by Commander Kate Vanderlaan, Northern Territory Police is valid and requires a Hearing pursuant to Section 47I(7) of the Act.
- 29) Further, the correspondence from the CEO of the DWC does not constitute an objection and does not require a Hearing. Having said this, the Commission is minded of the role and function played by the DWC in relation to development of the Waterfront area, its activities, uses and market mix which have resulted in the DWC formulating Guidelines for liquor

applications. In this regard the Commission invites the DWC to be present at the Hearing to outline the concept for the Waterfront area to give context to the Commission's consideration of the application and objection.

- 30) All parties, including Police, the applicant and the DWC will be advised of this outcome and notified of the Hearing date, their rights under Hearing process and be given a copy of a Hearing Brief prepared by Licensing, Regulation and Alcohol Strategy.

Richard O'Sullivan
Chairman

19 May 2011