

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Fiddler's Green Tenancy D3 Wharf One Darwin City Waterfront Darwin NT 0800
Applicant:	Darwin Waterfront Development Corporation
Proceedings:	To undertake a review, under Section 47J of the <i>Liquor Act</i> , of the Licensing Commission's decision to dismiss the Waterfront Development Corporation as a valid objector to the application for a liquor licence for Fiddlers Green
Members:	Mrs J M Large (Presiding Member) Mr W Grimshaw Mrs K Williams
Attendances:	Mr P Coleman Mr T O'Neill
Date of Hearing:	13 April 2010

Background

1. Following the advertisement of an application for a liquor licence for the premises Fiddler's Green in November 2009 the period for the lodgement of objections, under the *Liquor Act*, against this application was within thirty (30) days, namely by 15 December 2009. In this instance the Chairman of the Licensing Commission (the Commission) extended the objections cut-off date to close of business on 21 December 2009.
2. A submission received from the Chief Executive Officer, Darwin Waterfront Corporation (the Corporation) dated 20 November 2009 stated:

"The proposed premises are generally consistent with the overall intent of the Waterfront Precinct and the Darwin Waterfront Corporation generally supports subject to appropriate consideration of operational matters."
3. A further submission was received dated 21 January 2010 from the Darwin Waterfront Development Corporation objecting to the beer garden, hours of operation, customer numbers.
4. On 8 March 2010 the Chairman of the Licensing Commission assessed all submissions received and reached the decision that the Corporation was not a valid objector based on the following:
 - In the first submission from the Waterfront Corporation *"The comment that the Corporation generally supports the application defines the submission as not being an objection under Section 47 F(2) of the Act."*
 - The subsequent letter from the Corporation was not within the time limits and could not be considered as a valid objection.

5. The Chairman made further comment in his decision that:

“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 the Precinct, particularly in terms of its blend of public, residential and commercial elements”.

6. On 10 March the Darwin Waterfront Corporation made an application, pursuant to Section 47J of the *Liquor Act* (the Act) for a review of the Commission’s decision to dismiss the Corporation’s objection to the liquor application for Fiddler’s Green. The application stated that notwithstanding the wording used in the submission dated 20 November 2009 the Corporation intended it to be an objector and that the letter of 21 January 2010, whilst out of time, was clearly an objection to the application. Therefore, the Corporation should not be deprived of its right to have its objection heard.
7. The application, further, submitted that the response of the applicant to objections raised are positive and *“go some way to addressing the issues raised by the Corporation and other objectors”*. However, given the fundamental change to the application it would be appropriate for the Commission to allow a further time for submissions to be made on the amended application.

Hearing

8. At the Hearing on 13 April 2010 the Commission on Review commenced the proceedings by addressing the Corporation’s request in relation to the “amended application” by explaining that the applicant upon being notified, possibly for the first time, of the objections from residents and workers in the neighbourhood offered changes to the application to allay their concerns. At the formal Hearing of the application the Commission will take into account all objections, the applicant’s offer and any other information considered relevant by the Commission in reaching its decision on whether there should be a liquor licence granted for the proposed premises, the most appropriate type of licence and conditions to be imposed on such licence.
9. Mr Coleman outlined the history, role and legislative background of the Darwin Waterfront Corporation. He identified the main causes for concern for the Corporation were the large alfresco area which was to be used as a bar, the use of glass outside the premises, hours of operation, noise and security control of anti-social behaviour in the public areas of the Precinct.
10. When Mr Coleman strongly objected to any “take away” licence for the premises the Commission on Review advised that currently there is a Government moratorium on any new “take away” licences and no application had been made in regards to Fiddler’s Green. If the moratorium should be lifted any future applications would be dealt with in accordance with the requirements for the Act.
11. There was some confusion as to whether the owner of the premises had given the applicant permission to lodge an application for a tavern licence because the original permission for the development of the overall premises did not include a tavern. It was conceded that the owner would agree to a restaurant licence on the premises.

Decision

12. The Commission on Review, having considered all the issues and the submissions made on behalf of the Darwin Waterfront Corporation, has reached the conclusion that nothing has 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.

13. However, the Corporation has given the Commission a better understanding of its role and the importance of the outcomes of the issues surrounded any liquor licence being granted with the Precinct. In view of this the Commission on Review determines 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 Darwin Waterfront 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.
14. The Commission on Review further determined that the question of permission by the owner of the premises to be occupied by Fiddler's Green should be clarified either prior to or at the forthcoming liquor licence Application Hearing.

Mrs J M Large
Presiding Member

7 May 2010