

Northern Territory Licensing Commission

Reasons for Decision

Premises:	21 On the Wharf Shop 83 Stokes Hill Wharf Darwin NT 0800
Proceedings:	To undertake a Hearing on the papers, in accordance with Section 47J(3) of the <i>Liquor Act</i> , to review a Member's decision to dismiss objections by Mr T Huynh and Ms R Waugh to an application for a liquor licence by 2 Fresh Pty Ltd
Members:	Mr Richard O'Sullivan (Chairman) Mr Wally Grimshaw Mrs Jane Large
Date of Hearing:	18 June 2012

Background

- 1) On 28 January 2012, Mr B Barnes, sole Director of 2 Fresh Pty Ltd, made application to the Director of Licensing for an "Off Licence" to sell liquor from the proposed premises to be known as 21 on the Wharf, located at Shop 83, Stokes Hill Wharf, Darwin NT 0800. The application was advertised in the NT News on 22 and 24 February 2012.
- 2) By 21 March 2012 the Director of Licensing had received a total of eight (8) objections to this application which included objections by Mr T Huynh and Ms R Waugh. On 15 May 2012, in accordance with Section 47I of the *Liquor Act* (the Act), the Legal Member, on behalf of the Licensing Commission ("the Commission"), considered all objections and determined that three (3) of the objections were valid and should proceed to a Hearing and five (5) were not valid as they did not fall with the criteria for objections specified in the Act and should be dismissed. The objections by Mr T Huynh and Ms Waugh were found to be not valid and they were informed in writing of this Decision.
- 3) On 16 May 2012 the Commission set down the Hearing into the application and the valid objections for 9.30 hours Tuesday 26 June 2012.
- 4) On 23 May 2012 McQueens Solicitors representing Mr Huynh, wrote to the Director of Licensing requesting a review of the Legal Member's Decision, in accordance with Section 47J(1) & (2) of the Act. On 24 May 2012 Ms Waugh wrote to the Director of Licensing requesting a review of the Decision.
- 5) On 13 June 2012 the Commission received all the paperwork relating to the Decision of 15 May 2012 and the request for a review and a Hearing on the Papers was set for 18 June 2012.

Consideration of the issues

- 6) Section 47F(2) of the Act states:

"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."

- 7) Further, Section 47I(3)(c) sets out the criteria for dismissing of an objection, namely:

- (3) The member selected under subsection (2):

(c) must:

(i) dismiss the objection if satisfied that the objection:

(A) is of a frivolous, irrelevant or malicious nature; or

(B) does not describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community;

- 8) In the Decision of 15 May 2012 the Legal Member determined the following:

"In my opinion the objections lodged by Mr Tommy Huynh and Ms Rachel Waugh are commercially motivated and, as such, do not fall within the grounds for objection set out in Section 47F(2). Mr Huynh is the proprietor of the only premises licensed to sell take away alcohol at the Stokes Hill Wharf for off premises consumption at present and Ms Waugh is an employee of that business. Both objectors refer to the potential for alcohol consumption to cause harm and increase risk for patrons of the area they do not specify any component of the application that would distinguish the proposed premises from (sic) the one that already exists in the area."

"The objections of Mr Huynh and Ms Waugh should be dismissed on the basis they do not comply with the specified requirements for an objection to an application for a licence of the type sought by the applicant."

- 9) The objections have not been considered of a frivolous, irrelevant or malicious nature. Therefore the Commission has considered the original objections, the Objection Decision and the request for a review to determine whether objections raise circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community.

- 10) In seeking a Review of the Legal Member's Decision dismissing Mr Huynh's objection, Mr McQueen has submitted:

"Mr Huynh is identified in paragraph 12 of the Decision as being entitled to lodge an objection on the criteria specified in S47F 3 (a) and (b) of the Liquor Act. The objections raised by my client identified in paragraphs 13 and 14 of the Decision dated 15 May 2012 raise the grounds identified at S47F (2) (a) and (b) of the Act as being appropriate.

If the Act permits Mr Huynh to object and his objection raises permitted grounds it is submitted that the objection should be determined to be valid one and require a Hearing.

The fact that Mr Huynh operates a similar business cannot of itself be the basis of a determination that his objection is commercially motivated (paragraph 48). In addition it is incorrect to assert that the objections do not comply with the specified requirements (paragraph 49).

My client wishes to give evidence in support of his own written objection and as a signatory to the Traders of Stokes Hill Wharf. He also wishes to call evidence from some signatories to the petition lodged with the Director in accordance with the provisions of S47F(2) (a) and (b).

Questions as to whether "commercial motivation" has influenced Mr Huynh's objection can be assessed when the Commission has heard evidence from Mr Huynh."

- 11) Ms Rachel Waugh has also sought a review of the dismissal of her objections on the following ground:

"I write to request a review of that decision on the basis that the Member in paragraph 8 determined that I am entitled to lodge an objection as an employee working in the neighbourhood. My objections, as identified in paragraphs 9 and 10 of the decision, fall within the provisions of S.47 and also under Section 47F(3) of the Act, being persons who reside or work in the neighbourhood of the proposed premises.

I deny that my reasons for objecting are "commercially motivated" and that a determination can be made without first giving me the opportunity to present my evidence at a hearing.

As a resident of Stuart Park my current area of residence will be affected by the decision to grant another Take Away liquor license in this area.

As an employee and not the employer I do not stand to gain or lose financially or "commercially" for any decision reached. My objection was written out of my own free will and not that of my employer or anybody else. As an employee, I am also responsible for the person(s) that I serve alcohol to."

- 12) Mr Huynh's objection focused on the "adverse effect on the immediate neighbourhood of a further licence", lack of demand for another take away outlet on the Wharf, the location of the premises adjacent to the designated Kids Safe area which would affect the safety of parents and kids and the high risk and problems which may arise from a further licence through the increase of the density and availability of alcohol in a small area which is surrounded by water. Ms Waugh objected to a perceived increase in abuse and anti-social behaviour flowing from having another liquor outlet in the area. She stated that Stokes Hill Wharf is largely unfenced and surrounded by water which would make the control and monitoring of alcohol consumption a lot harder to monitor and increase the risk of people becoming intoxicated and jumping or falling off the wharf. Ms Waugh specifically objected to the location of the premises next to the only fully fenced child safe area and facing the ice cream shop which is always popular with children. In their requests for a review both objectors reiterate their objections and strongly refute the statement that their objections are commercially orientated.

- 13) Whilst the objections by their mention of "demand" give weight to the Legal Member's Decision that they might be commercially motivated, the Commission on Review has taken into account that the two objectors' submissions for a Review have strongly refuted that this in the motivation or grounds for their objection. Also, the Commission on Review finds that the objections raised as to the location and effect on the amenity of the neighbourhood flowing from the increase of alcohol premises in a small area are within the criteria set out in Section 47F(2) and 47I(3)(c). The Commission agrees with the submission from McQueens that if the Act permits a person to object and the objection raised falls within permitted grounds then the objection should be determined to be valid and require a Hearing. On that basis the Commission has determined to revoke the Legal Member's decision and conduct a Hearing in relation to the objections. At Hearing the Commission can and will seek to determine to what extent these and other objections have a commercial interest basis. Weight accorded to objections will be assessed in conjunction with this determination.

- 14) On a separate issue, the Commission has received a request from McQueens Solicitors stating that, should Mr Huynh's objection be accepted, then the Hearing of the objections against the application for a liquor licence by 2Fresh Pty. Ltd should be vacated and adjourned to a later date to allow their client to have adequate preparation time and provide proper instructions.

- 15) The time delay of twenty days between receipt of the application for review and the forwarding of the application to the Commission is a concern given that under Section 47J(3) the Commission is to undertake a review in an expeditious manner and a Hearing into the application and valid objections had already been set down for 26 June 2012. The

Commission is not willing to vacate the Hearing date and extend the delay in finalising this matter further. However, if there are substantive problems associated with Mr Huynh's evidence then the Commission will hear submissions on that matter at the Hearing.

Decision

16) In accordance with Section 29(b) of the Act, the Commission determined that:

- (a) The Commission decision of 15 May 2012 is revoked and the objections by Mr Huynh and Ms Waugh are considered valid objections and are to go to Hearing.
- (b) The Commission will conduct a Hearing into the application by 2 Fresh Pty Ltd for an "Off Licence" and objections to this application at 9.30 hours on Tuesday 26 June 2012.

Richard O'Sullivan
Chairman

21 June 2012