

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Beachfront Hotel 342 Casuarina Drive Rapid Creek NT 0810
Licensee:	Trojanmede Pty Ltd
Licence Number:	80315200
Proceedings:	To Determine an Additional Penalty under Section 124AAA of the <i>Liquor Act</i> for Breaches of Section 102 and Section 121 of that Act.
Members:	Ms B Monaghan (Presiding Member) Mr W Grimshaw Mrs J Large
Date of Hearing:	23 July 2009
Appearances:	Mr R Murphy Director of Licensing Mr J Lawrence for Licensee Mr D Sallis, Managing Director Trojanmede Pty Ltd

Background

- 1) On Tuesday 31 March 2009, Trojanmede Pty Ltd, the Licensee of the Beachfront Hotel pleaded guilty in the Darwin Court of Summary Jurisdiction to breaches of the *Liquor Act* (the Act) namely, on 15 August 2008 the Licensee sold liquor to an intoxicated person (Section 102 of the Act) and the Licensee failed to remove or exclude from the licensed premises a person who was intoxicated (Section 121 of the Act). Mr Luppino SM, convicted Trojanmede Pty Ltd and imposed an aggregate penalty for both breaches of \$1000 with Victim Levies of \$400.00.
- 2) On 23 July 2009 the Licensing Commission considered submissions in relation to imposing an additional penalty for the above breaches pursuant to Section 124AAA of the Act.

Submissions

- 3) Mr R. Murphy, representing the Director of Licensing, drew the Commission's attention to the facts, as contained in the transcript of the matter when it was before the Court of Summary Jurisdiction. In short, a well built young male patron was seen by inspectors on premises to be drinking beer straight from the jug. He was visibly intoxicated at the time. Despite being approached by both security and the duty manager, he was not removed from the premises but was allowed to remain and continue drinking. Mr Murphy also tendered a written submission setting out the seriousness of the breaches; penalties imposed in similar cases and mitigating factors that should be taken into account by the Commission when considering any additional penalty. These factors were:
 - a) The Licensee has been the Licensee of Beachfront hotel since 2000 and prior to this matter coming to court had an unblemished record.
 - b) The Licensee entered an early plea of guilty to the criminal charges.
 - c) The Commission hearing process was not contested.

- d) Since the breaches the Licensee has implemented the following procedures designed to prevent or at least minimise future breaches from occurring:
- Responsible service of alcohol courses for staff employed at the premises;
 - A banning of the sale of jugs of beer;
 - A change of security company;
 - Erection of signage regarding the rules of patron conduct.
- 4) In conclusion Mr Murphy's submission recommended that the Commission impose the maximum license suspension of twenty-four (24) hours but that the suspension should be suspended for a period of twelve (12) months.
- 5) Mr J. Lawrence, on behalf of the Licensee, stated that Mr Sallis, the Managing Director of Trojanmede Pty Ltd takes the incident very seriously and that he accepted his responsibility by making an early guilty plea in the Court to both breaches. He emphasised that the Licensee has been in the liquor industry for his entire adult life and has an unblemished record. Mr Lawrence asserted that the breaches had occurred because the Licensee had been let down by his staff on the night and his instructions on serving and having intoxicated persons remain on the premises had not been implemented.
- 6) Mr Lawrence advised that since this incident the Duty Manager involved had left and new security arrangements have been made at an increased and substantial cost to the Licensee. In addition, Mr Lawrence reminded the Commission that, around the time of the breach, Mr Sallis was willingly involved in community meetings to address neighbourhood amenity issues in and around his hotel. When asked whether there were any relevant differences that the Commission should note between the penalties imposed in the two (2) decisions referred to by Mr Murphy Jabiru Golf Club 11/11/08 and Jabiru Sports & Social Club 3/02/09 and this current matter, Mr Lawrence indicated that the Beachfront breach was no worse than those.
- 7) The evidence put before the Commission was that the Duty Manager involved in the incident was a part time trainee on an overseas work visa and that the other female duty manager on the night was located in the office for the majority of the evening. He also admitted that he could not remember who was currently undertaking the security of the premises as security provider had changed again the week before. Whilst not excusing their actions, Mr Sallis acknowledged that "fear" may have been a factor in why the intoxicated person was not removed from the licensed premises as the person in question was a big man who was known to be aggressive. This assessment is endorsed by the Licensing Inspector's statement on the events in the car park later in the night.

Consideration of the Issues

- 8) The Commission has stated on numerous occasions that it regards the service of alcohol to intoxicated persons and allowing intoxicated persons to stay on licensed premises as very serious offences. The effects of such practices are obvious, not only to the Commission but to the community at large. The potential for anti-social behavior, violence and self harm resulting from the service of alcohol to intoxicated persons is significant and, rightly, of major concern to the Commission, the Police and the general public. Further, the Commission has publicly stated that it is prepared to impose tough penalties, including the suspension of licences, where Licensees breach the Act or the conditions attached to their licence.
- 9) In this matter, the Commission must take account of the fact that the Licensee has already been before the Courts and a conviction and monetary penalty has already been imposed. Therefore the Commission is guided by and limited to imposing any additional penalty in accordance with Section 124AAA of the Act as follows:

“124AAA Additional penalty

- (1) *Notwithstanding anything in this Act, the Commission may, in relation to the finding of guilt of a Licensee for an offence against section 102, 105, 106B, 106C or 121, by notice in writing served on the Licensee and for a period specified in the notice, not exceeding that prescribed by subsection (2):*
- (a) *suspend the Licensee's licence; or*
- (b) *vary the licence so that the licence applies to and in relation to part only of the premises to which it previously applied,*
- or, where the offence is a third or subsequent offence, instead of suspending or varying the licence, cancel the licence.*
- (2) *For the purposes of subsection (1), the following are the prescribed periods:*
- (a) *where the offence is the first offence by the Licensee against any of the sections referred to in that subsection – 24 hours;*
- (b) *where the offence is a second offence – 7 days; and*
- (c) *where the offence is a third or subsequent offence – 28 days.*
- (3) *For the purposes of subsection (2)(b) or (c), an offence is a second, third or subsequent offence if the previous offence was an offence, or the previous offences were offences, against any of the sections referred to in subsection (1), whether committed before or after the commencement of this section”*
- 10) The Commission notes that this is a first offence for the Licensee and under Section 124AAA(2)(a) the Commission can impose no more than a maximum prescribed period of licence suspension of twenty-four (24) hours. In its assessment of whether the maximum penalty should be imposed the Commission has taken into account the submissions by Mr Murphy and Mr Lawrence and the comments made by the Stipendiary Magistrate in the Court of Summary Jurisdiction hearing.
- 11) Although, there are two breaches of the Act, namely sell liquor to an intoxicated person and failing to remove an intoxicated person from a licensed premise, they relate to the same person at the same time in the same premises. The Commission has decided that one aggregate penalty is appropriate.
- 12) The Licensee has a long and unblemished record in the liquor industry and in this instance he feels that he has been let down by his management staff and the security officers. As acknowledged by Mr Sallis the responsibility for ensuring that the licensed premises is run in accordance with the Act and the liquor licence conditions lies clearly with the Licensee. It is of concern to the Commission that on the night in question an unsupervised trainee manager from overseas employed under a work visa was the duty manager on the floor. There was an element of intimidation which may have affected the manager's and the security officers' actions but that does not abrogate them from carrying out their obligations and in such circumstances the duty manager in the office or the Licensee should have been notified or the attendance of the police could have been requested.
- 13) Mr Luppino SM stated at the hearing in the Court of Summary Jurisdiction that:
- “. with the Beachfront Hotel located in a residential area, there is an increased need for additional vigilance here”.*

The Commission concurs with this statement. The responsibility for ensuring there are adequate, trained management staff and policies in place falls upon the Licensee. This is especially important if the Licensee is not "hands on" at the licensed premises. It is apparent that the management of the operations of the Beachfront Hotel on the night in

question was such that it failed to prevent breaches of the Act and licence conditions and the maximum 24 hours suspension is warranted.

14) However, there are mitigating circumstances to take into account. The Hotel has changed its management team and is now employing more experienced managers and has entered into new security arrangements. They have stopped the service of liquor in jugs and improved the training of staff. Mr Sallis' personal involvement in community meetings and putting in place measures to improve the consequences of having a hotel in a residential area are to be commended.

15) Mr Luppino's closing remarks at the hearing were:

"I am quite impressed with the steps taken now to address the problem, namely, not having any service in the way of jugs, although that's not a big decision. I would have thought that was a rather obvious one. But the additional training and the replacement of security, hopefully with someone more prepared to carry out their role, is quite an extensive change and should address the problem in the future."

16) Taking all of the above into account the Commission agrees with the proposed recommendation that the licence suspension should be suspended for a period of twelve (12) months.

Decision

17) The Commission determines that a one (1) day suspension of the licence of the Beachfront Hotel be imposed and that penalty be served on a Friday being the day of the offence. Taking account of the matters set out above and in particular the proactive steps taken by management of the premises since the offence, the Commission directs that the suspension be totally suspended for a period of twelve (12) months from the date of this decision. It will only be served if a breach is proven relating to a similar or more serious incident within the period of suspension.

18) The Commission further directs that the Director retain a copy of this decision on the file of the Licensee for reference in the event of any future offence on the part of the Licensee

Brenda Monaghan
Presiding Member

27 July 2009