

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Gapview Resort Hotel 115 Gap Road, Alice Springs
Licensee:	CC1 Pty Ltd
Licence Number:	80102399
Nominee:	Gregory John Boaz
Proceeding:	Complaint pursuant to Section 48(2) of the <i>Liquor Act</i> , alleging breach of s102, serve intoxicated person/s
Complainant:	Senior Sergeant Lance Godwin Officer-in-Charge, Alice Springs Police Station
Heard Before:	Mr Peter Allen
Date of Hearing:	20 February 2003
Date of Decision:	20 March 2003
Appearances:	Senior Sergeant Godwin for the Police Mr John Boaz, Nominee for the Licensee

1. The complaint made by Senior Sergeant Godwin of the Northern Territory Police was lodged with the office of the Director of Licensing, in a letter dated 28 November 2002, signed by the complainant.
2. At commencement, Mr John Boaz, nominated manager of the respondent licensee, CC1 Pty Ltd, admitted that the licensee had breached the provisions of the *Liquor Act*, as complained of by Senior Sergeant Godwin in his letter dated 28 November 2002.
3. The agreed facts of the complaint are that at about 7:00PM on 20 July 2002 an Aboriginal woman entered the bottleshop area of the licensed premises on foot and was served a two-litre cask of tawny port by Matthew Boaz, a staff member of the licensee. The purchase was observed by Police officers who formed an opinion that the person served was intoxicated. The purchaser was apprehended for the purposes of protective custody and later recorded a reading of .385% on a hand held breath testing unit.
4. It is also agreed that while Police officers were speaking with Matthew Boaz, a motor vehicle entered the bottleshop area and staff member Paul Haygarth served the driver with a two-litre cask of port. The purchaser was arrested for "driving under the influence"; a subsequent blood test indicated a blood alcohol reading of .249%.
5. The incidents complained of are taken to constitute a single complaint; the first complaint lodged in respect of the current licensee.
6. Mr Boaz submits that the breaches occurred as a result of the inexperience of the licensee and its staff, the premises having been acquired only a few weeks prior to the incidents complained of. Mr Boaz submits that, in any event, it's very difficult to assess for intoxication, persons who drive into the bottleshop (and presumably remain seated in the vehicle).
7. Senior Sergeant Godwin submits that inexperience in the management of licensed premises should not provide an excuse for breaches of the Act. He submits that the

responsibilities of licensees have immediate effect upon the grant of a licence. Senior Sergeant Godwin submits that during the second service of liquor to an intoxicated person, the driver of a motor vehicle; Police were readily able to assess the driver as intoxicated and that bottleshop staff should have fulfilled the licensee's responsibilities in this regard.

8. In response, Mr Boaz submits that the premises have been much better managed in the period since the breaches occurred and that staff have attended an appropriate training course. Senior Sergeant Godwin concurs with Mr Boaz as to the improved management of the premises and advises that the premises (along with other premises in Alice Springs) are much better managed than say, four or five years ago.
9. From the submissions of Mr Boaz and Senior Sergeant Godwin I note that staff training has occurred since the incidents complained of and that the premises are now better managed. Nevertheless I note and concur with the submissions of Senior Sergeant Godwin that inexperience should provide no excuse for breaches of the Act and that the responsibilities of licensees commence immediately upon the grant of a licence
10. In my view the two breaches of the Act are of significance, particularly when considered in the context of community expectations and the well-known desire of the Alice Springs community to diminish liquor-related harm in the town and the surrounding area.
11. That the female pedestrian, later found to have a blood alcohol content of .385%, was served by staff of the licensee is of itself a serious breach of Section 102 of the *Liquor Act*.
12. That barely minutes later a second person is served while intoxicated can be taken to indicate that the staff on duty at that time had failed to turn their minds to issues of intoxication. An incident that reflects poorly on the management practices of the licensee at that time and is a further breach of Section 102.
13. That staff served this second person, the driver of a motor vehicle, later found to have a blood alcohol content of .249%, a level five times greater than the legal limit for drivers of motor vehicles, is to commit an unconscionable act for which the staff members concerned must stand condemned.
14. A satisfactory training program for staff combined with adequate and experienced supervision may well have prevented such a situation in the first instance. True, it may be more difficult to assess the sobriety of a person seated inside a vehicle but the degree of difficulty does not diminish the licensee's responsibility or its culpability in this instance.
15. The breaches of the Act are in my opinion of such gravity, that suspension of the licence for a period far greater than that normally imposed for a first breach is clearly appropriate.
16. Although minded to suspend the licence for a period of seven days, some form of discount is appropriate in the light of the licensee's frank and early admission of the breaches that comprise this complaint. Further, it is important to note that staff have received the training due to them and that no further complaints regarding these premises have come before the Commission. Also noted is Senior Sergeant Godwin's concurrence with the licensee's submission that the premises are now better managed. In consideration of these factors the period of suspension is set at four (4) days and will be limited to the sale of liquor for consumption away from the premises.
17. Liquor Licence No. 80102399 in its application to the sale of liquor for consumption away from the premises, whether from the bottleshop or from elsewhere will be suspended for four (4) trading days, which is to say that all "take-away" trade from the licensed premises will be prohibited during the course of those days.
18. The period of suspension will commence tomorrow, Friday 21 March 2003.

Peter R Allen
Chairman