

Northern Territory Licensing Commission

Decision

Premises:	Nguiu Club Bathurst Island
Licensee:	Nguiu Club Association Inc
Nominee:	Michael Coombes
Nature of Premises:	Tavern
Licence Number:	80303731
Proceeding:	Complaint pursuant to Section 48(2) of the <i>Liquor Act</i> , conduct of the business at the licensed premises.
Complainant:	Constable Gary Smallridge
Heard Before:	Peter R Allen (Chairman) John Withnall (Legal Member) Annette Milikins (Member)
Dates of Hearing:	24 September and 27 November 2002
Date of Decision:	10 January 2003
Appearances:	Peter Elliot for the Licensee John Tippet QC for the Complainant

This decision arises from a complaint dated 22 July 2002, lodged by Constable Gary Smallridge of the Northern Territory Police based at Nguiu on Bathurst Island.

The complaint contains details of forty-one incidents, which occurred in the period commencing 22 May 2002, that in the opinion of the complainant clearly illustrate the following:

- (a) A lack of trained security staff resulting in the excessive intoxication of patrons,
- (b) The lack of enforcement, by the Nominee, of licence conditions and club rules,
- (c) That the Nominee allows staff to remain on the premises outside of licensed hours and permits them to drink excessively,
- (d) That the Nominee and Executive Committee fail to respond to Police and community concerns and requests to improve business conduct,
- (e) That patrons are served well past accepted levels of intoxication.

Although many of the instances recorded in the itemised complaint do not amount to evidence against the licensee, there are nevertheless sufficient reported incidents effectively unaddressed by the licensee to sustain the upholding of the thrust of the complaint as to the unacceptable behaviour of the nominee and staff of the Club.

Mr Elliot, for the Club, conceded there is some evidence to demonstrate that persons are permitted to consume liquor in circumstances where they should not have continued to be served and the Commission notes that such persons include the Nominee and staff members of the Club.

As a direct consequence of the complaint being upheld, the "Interim Conditions by Consent" agreed between the parties on 24 September 2002 and included in the licence, with date of effect

10 October 2002, are confirmed as on-going conditions of the licence. The fifth of these interim conditions, that referring to funerals, ceremonies and bush holidays was varied and agreed between the parties during that portion of the hearing conducted on 27 November. The substance of this variation to licence conditions is drawn from a letter to the Commission dated 13 November 2002 and signed by Maralampuwī Karrapu'vu, President, Tiwi Islands Local Government and Nguīu Community Management Board.

The complete set of licence conditions referred to above, albeit with editorial amendments, are as follows:

1. *The licensee shall employ licensed non-Tiwi security personnel during the trading hours of the Nguīu Social Club in the following manner:*
 - (a) *Monday to Wednesday, a minimum of two (2) security personnel;*
 - (b) *Thursday to Saturday, a minimum of three (3) security personnel.*
2. *The Nominee of the Nguīu Club Association Inc shall be present in the bar area of the licensed premises and personally supervise all staff between the hours of 5:00PM and 7:00PM on each trading day.*
3. *The licensee shall provide cooked "finger food" such as hot chips, sausage rolls and party pies during the period 6:00PM to 7:00PM on each trading day. Such food shall be available free of charge and in sufficient quantity to be available to all patrons.*
4. *Between 6:00PM and 7:00PM, all patrons of the Nguīu Social Club shall be limited to having not more than one cup of beer in their possession or control at any one time.*
5. *For funerals and ceremonial occasions the Club shall close in the manner described hereunder:*
 - (a) *Deaths: The Club shall close throughout the trading period immediately following the death of a community member.*
 - (b) *Funerals: The Club shall close on the day on which the deceased person is buried.*
 - (c) *Ceremonies: The Club shall close on the final day of ceremonies.*

Evidence was presented to the effect that the Nominee and staff of the Club are remaining on the premises, on some occasions for several hours after the designated closing time, and are consuming liquor to levels demonstrably beyond the point of intoxication. In the Commission's view such practices are unacceptable and likely to lead to further liquor-related problems in the community when those persons who have consumed to excess depart the club. This issue further impacts on the duties of the Police in the community, who having managed any incidents which arise post-closing time of the Club are then obliged to deal with a second round of incidents when staff members eventually depart.

In order to ensure that incidents and issues arising from the consumption of liquor by staff are minimised, the licence is varied by the inclusion of the condition hereunder:

"Staff drinks" are prohibited. Staff of the Club shall not consume liquor while on duty nor on the licensed premises nor on any day on which they will be or have been on duty.

The quantum and detail of liquor-related incidents reported by Police and contained in Constable Smallridge's complaint gave rise to submissions in favour of a day of closure during the trading week so as to provide a period of respite from the incidents besetting the community. A respite day arrangement exists in Tennant Creek and is the centrepiece of restrictions on the sale of liquor that apply in the township. The restrictions been publicly and formally evaluated on two occasions and have proven to be a worthwhile initiative that has achieved reductions in liquor-related incidents and harm to the community.

Mindful that similar benefits may accrue in the Nguiu community, the licence is further varied by the inclusion of the condition hereunder. As was initially the case in Tennant Creek, the respite day arrangements will be in the form of a trial.

The licensed premises shall be closed and not trade on Wednesdays. The closure will be for a trial period pending the Commission's review, on or after 30 June 2003, of the Tiwi Islands Liquor Management Plan.

Mr Tippet for the Police submitted that the Commission should give attention to the wide-ranging issues flowing from the consumption of liquor on the Tiwi Islands, both Bathurst and Melville Islands and the four licensed premises situated thereon. The process sought by Mr Tippet is already in train in the form of a Liquor Management Plan currently being developed by the Tiwi Islands Local Government, the Police and staff of the Director of Licensing, with reference to other stakeholder groups including the licensees of the three other clubs.

The Commission is satisfied with the current progress towards the proposed Liquor Management Plan and expects to study the plan in a complete form prior to 30 June 2003. Progress reports received from the Director of Licensing indicate that the Plan will include community-based resolutions relating to licensed hours and licence conditions, permits and responsible management practices.

The Plan is likely to deal with the difficult and inequitable situation whereby Bathurst Island is a Restricted Area pursuant to s.74 of the *Liquor Act* and Melville Island is not. The Tiwi Islands Local Government is able to make application for Melville Island to be declared by the Commission as a Restricted Area. Applications are subject to the conduct of Hearing by the Commission. The Act allows for the opinions of local residents, licensees, the local government council, the Police and other interested persons to be considered by the Commission.

Mr Tippet also submitted that the Commission should examine the trading practices, management and corporate governance processes of the Club. To this end, the Commission will include the Nguiu Club Association Inc in its intended review of the operations of clubs throughout the Territory. Given the current Police and Tiwi community interest in the operations of the Club, the Commission will place it within the first group of clubs to be reviewed. As a consequence of the reported incidents of excessive consumption by patrons of the club, the review will include a study of consumption levels calculated from liquor purchase data.

Throughout the Hearing, Mr Tippet submitted that the Police were not seeking the suspension or cancellation of the licence, but rather were seeking to improve the management and supervision practices of the Club. This is not to say that the Club is immune from suspension but that the Commission has on this occasion, acceded to the Police submissions.

Material considered by the Commission portrayed the Nominee's management practices as being less than satisfactory. An interim change to licence conditions agreed between the parties required the Nominee to be present in the bar and personally supervise staff during licensed hours; a condition now etched into the licence as an on-going special condition. The Nominee is advised that consequent upon any further complaints being received, the Commission may wish to hear submissions as to his being fit and proper for the position.

This decision shall have effect from Monday 13 January 2003.

Peter R Allen
Chairman

Addendum to Decision

As described within the body of the Decision, the licence condition to be found at #5 on Page 2 was drawn from correspondence received from the President of the Tiwi Islands Local Government.

Correspondence now received on behalf of the President informs the Commission that Part (c) of licence condition #5 was an unintended outcome of the President's letter of 13 November 2002.

Accordingly, Part (c) is deleted from the Decision.

A revised licence shall issue forthwith, with date of effect 16 January 2003.

Peter R Allen
Chairman

16 January 2003