

Northern Territory Licensing Commission

Reasons for Decision

Premises:	The Tap on Mitchell 56 Mitchell Street Darwin NT 0800
Licensee:	Value Inn Pty Ltd
Licence Number:	80315790
Nominee:	Aneeta Clark
Proceedings:	Hearing to Consider Complaint alleging that the Licensee breached Section 121 of the <i>Liquor Act</i> namely: <ul style="list-style-type: none">Failing to remove an intoxicated person from the Licensed premises
Heard Before:	Mr Richard O'Sullivan) Mrs Cynthia-Lee Bravos Mr John Brears
Appearances:	Mr Ray Murphy for the Licensee Inspector Mark Wood for the Director of Licensing Ms J Lamaitre, Acting Nominee Gove Yacht Club
Date of Hearing:	7 June 2011

Background

- 1) A complaint has been laid pursuant to Section 48(2) of the *Liquor Act* ("the Act") alleging a breach of Section 121(1) in that the Licensee of The Tap on Mitchell failed to remove an intoxicated person from the licensed premises.
- 2) The complaint outlines that on 1 January 2011 at around 3.00am, Mr Tristam Turner was observed in Mitchell Street where he held a discussion with Constable Ridolfi and appeared to be showing signs of intoxication. At around 3.15am Mr Turner entered The Tap on Mitchell licensed area and proceeded past security at the top of the Hot Potato access stairs. While walking down the stairs Mr Turner is observed by Inspector Jeffrey Paull who describes him as being disoriented, unsteady on his feet with slurred speech.
- 3) Mr Turner is directed back up the stairs and following this, agrees to a hand held breathalyser test conducted by Constable Ridolfi, which recorded a blood alcohol level of 0.226%. Upon being questioned by Inspectors, Mr Turner admits to consuming eight to ten drinks during the day.

The Hearing

- 4) At the Hearing a précis of events similar to that outlined in the above Background was presented to Commissioners by representative of the Director, Mr Mark Wood and agreed to by Counsel for the Licensee, Mr Ray Murphy.
- 5) From submissions received, the Commission was advised that Mr Turner conducted a conversation with Constable Ridolfi prior to attempting to enter the Hot Potato Nightclub. Under Statutory Declaration, Constable Ridolfi described Mr Turner as intoxicated with loss

of coordination and balance. The Statutory Declaration further outlines that Mr Turner was slurring his words and smelt of alcohol.

- 6) On being advised that Mr Turner intended to go to the Hot Potato Nightclub, Constable Ridolfi told him he was too drunk and would not be granted entry and therefore his best course of action was to go home.
- 7) Evidence from Licensing Inspectors is that Mr Turner had disregarded Police advice and entered the licensed area of The Tap on Mitchell so as to gain entry to the Hot Potato Nightclub.
- 8) A Crowd Controller at the top of the stair entry to the Hot Potato, Mr Joshua Bond, failed to observe or to take heed of Mr Turner's intoxication and allowed him entry to the stairwell.
- 9) At the bottom of the stairwell, the Hot Potato Nightclub has further security in place and a pay booth for clients to make payment to gain entry into the Nightclub. Evidence provided was that Mr Turner failed to gain entry as he was observed walking down the stairwell by Inspector Paull who immediately formed the view that Mr Turner was intoxicated based on his being unsteady on his feet and when spoken to having slurred speech and appearance of disorientation.
- 10) Mr Turner was then directed to go back up the stairs and was questioned in relation to his state during which he admitted to consuming large quantities of alcohol at his motel prior to walking down Mitchell Street and into the licensed premises of The Tap on Mitchell.
- 11) The above facts are not disputed by either party and were confirmed by viewing of the CCTV footage during the Hearing.

Submissions on Penalty

- 12) Mr Wood noted that the Licensee had fully cooperated with Inspectors over the provision of information and CCTV footage of the incident. The Licensee had not contested the alleged breach. Mr Wood further noted that no harm had come from Mr Turner's brief time on the licensed premises.
- 13) Mr Wood advised that the Commission had the power, following Hearing, to amend or vary the licence under Section 49(4)(a) of the Act, and he sought the use of this power to exclude the area at the top of the stairwell and part of the stairwell itself from The Tap on Mitchell licensed areas so as to avoid similar breaches in future.
- 14) Mr Murphy provided a written submission on penalty which outlined the brevity of the time Mr Turner was on the licensed premises. Mr Murphy's submission outlined that Mr Turner was allowed to enter the stairwell by a Crowd Controller who is known to Mr Turner. The actions by this Crowd Controller in not identifying Mr Turner's intoxication has led to the licence breach. He further submitted that the level of intoxication of Mr Turner could not have been that significant as the actions of Police and Licensing Inspectors was to allow Mr Turner, follow obtaining the blood alcohol reading, to return to his motel "*unaccompanied and under his own steam*". His submission was for the imposition of no penalty given the circumstances and un-harmful consequence of the breach.

Consideration of the Issues

- 15) The Commission notes that Mr Turner's time on the licensed premises was less than one minute and using CCTV footage as a guide, the total time of Mr Turner on the licensed premises was forty-one seconds.
- 16) The Commission also notes that at no time did Mr Turner give an indication that he wished to stay or purchase alcohol at The Tap on Mitchell, rather his intention was to gain entry into the Hot Potato Nightclub and he was not successful in this endeavour.

- 17) Security is employed at the top of the Hot Potato entrance stairwell and this is the first vetting point for patrons wishing to enter the nightclub. Queues regularly form at this point which technically is on The Tap on Mitchell licensed premises. Patrons who are allowed to pass this initial check point then walk down the stairs to another check point at the entrance to the nightclub where again they are checked by security and pay an entrance fee when applicable.
- 18) It is apparent that the entry and part or all of this stairwell are also within The Tap on Mitchell licensed premises and therefore any patron in a queue at the top of the Hot Potato entrance or in the stairwell is located within The Tap on Mitchell licensed premises, even though the purpose of being where they are is unrelated to any services or products provided by The Tap on Mitchell. This case is an instance of this where a patron by being intoxicated and attempting to gain entry into the Hot Potato Nightclub has caused the Licensee of The Tap on Mitchell to breach its licence condition.
- 19) The Commission is disinclined to remove the top of the stairwell area, or indeed any of the stairwell area itself, from The Tap on Mitchell licensed area as this could constitute a severe penalty and impact the operations of the licensed premises.
- 20) The Commission, on finding the breach proven, imposes no penalty but is concerned of the ongoing problem associated with patrons intending to enter the Hot Potato Nightclub becoming a responsibility and liability of The Tap on Mitchell in avoiding breaches of Section 121(1) of the Act.

Decision

- 21) The Commission, at Hearing, handed down its decision ex tempore and this decision is also outlined below.
- 22) The Commission finds the complaint relating to the Licensee of The Tap on Mitchell breaching Section 121(1) of the Act proven. The Commission does not impose a penalty due to the unique nature and circumstances surrounding this proven breach. In imposing no penalty, the Commission takes into account the cooperation of the Licensee with Licensing Inspectors, the admission of the Licensee at the earliest opportunity, the lack of harm resulting from the breach, the brevity of time the patron spent on the licensed premises and the circumstance where the patron was allowed to walk back to his hotel room unaccompanied and unassisted.
- 23) The Commission directs the Licensee and the Director of Licensing to hold discussions over the location and definition of licence boundaries of the premises and whether any licence boundary amendment is required to avoid cases such as this or other similar technical breaches coming before the Commission in future.
- 24) The Commission urges a commonsense approach by both parties to achieve a practical outcome.

Richard O'Sullivan
Chairman

26 July 2011