

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE:	Annie's Place (NT) Pty Ltd
PREMISES:	Annie's Place
LICENCE NUMBER:	80105018
PROCEEDING:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> Breaches of Section 110 – Fail to Comply with a Condition of Liquor Licence
HEARD BEFORE:	Mr Philip Timney (Presiding Member) Ms Helen Kilgariff Mr Paul Fitzsimons
DATE OF HEARING:	27 November 2008
APPEARANCES:	Mr Matt Mulga for the Licensee Deputy Director Chris McIntyre for the Director of Licensing

BACKGROUND

- 1) A complaint pursuant to Section 48(2) of the *Liquor Act* ("the Act") was lodged against the Licensee of Annie's Place alleging a breach of Section 110 of the Act for failure to comply with a condition of licence.
- 2) On Friday 15 August 2008 at approximately 11.10 pm Licensing Inspectors Murray MacAllister and Sondra Barry attended licensed premises at Annie's Place, situated at 4 Traegar Avenue, Alice Springs ("the Premises"). The Inspectors were admitted through a locked gate by a person who was leaving the Premises. Mr MacAllister was served a XXXX Gold beer and a glass of brandy and dry. The person serving Mr MacAllister made no mention of the necessity to purchase a meal or supper in conjunction with the purchase of alcohol. Some thirty-five (35) minutes later Mr MacAllister asked a member of the staff if there was any food available. He was advised there was a vending machine just outside the door.
- 3) The Liquor Licence for the Premises contains conditions relating to the trading hours permitted for the sale of alcohol as follows:

Trading Hours for Travellers Café shall be between:-

(a) Trading Hours

Sunday 10:00 and Sunday 15:00 & Sunday 17:00 and Monday 01:00
 Monday 11:00 and Monday 15:00 & Monday 17:00 and Tuesday 01:00
 Tuesday 11:00 and Tuesday 15:00 & Tuesday 17:00 and Wednesday
 01:00
 Wednesday 11:00 and Wednesday 15:00 & Wednesday 17:00 and
 Thursday 01:00
 Thursday 11:00 and Thursday 15:00 & Thursday 17:00 and Friday 01:00
 Friday 11:00 and Friday 15:00 & Friday 17:00 and Saturday 01:00
 Saturday 11:00 and Saturday 15:00 & Saturday 17:00 and Sunday 01:00

(b) Meal

Liquor may only be served and consumed in the Restaurant area in conjunction with a meal.

Trading Hours for Travellers Café Supper Club shall be between:-

(a) Trading Hours

Sunday 21:00 and Monday 01:00
 Monday 21:00 and Tuesday 01:00
 Tuesday 21:00 and Wednesday 01:00
 Wednesday 21:00 and Thursday 01:00
 Thursday 21:00 and Friday 01:00
 Friday 21:00 and Saturday 01:00
 Saturday 21:00 and Sunday 01:00

(b) Meal

Liquor may only be sold ancillary to supper.

Trading Hours for Travellers Café Tavern shall be between:-

(a) Trading Hours

Sunday 10:00 and Sunday 21:00
 Monday 16:00 and Monday 21:00
 Tuesday 16:00 and Tuesday 21:00
 Wednesday 16:00 and Wednesday 21:00
 Thursday 16:00 and Thursday 21:00
 Friday 16:00 and Friday 21:00
 Saturday 16:00 and Saturday 21:00

(b) Without a Meal

Liquor may only be sold and consumed during the above hours without the need to be ancillary to a meal.

Swimming Pool Courtyard -

Bona Fide Lodgers

- (a) Liquor shall be sold at any time to bona fide lodgers for consumption on the premises.
- 4) Mr Macallister and Ms Barry attended the Travellers Café Supper Club on the Premises at approximately 11:10pm on a Friday evening and purchased liquor. The relevant licence condition requires that liquor may only be sold in the Café Supper Club at that time ancillary to supper.

HEARING

- 5) Deputy Director South Mr Chris McIntyre advised the Commission of the nature of the complaint following which Licensing Inspector Mr Murray MacAllister was sworn and gave evidence of the factual background leading to the complaint. In response to a question from Mr McIntyre, Mr MacAllister advised that he did not advise the person who opened the gate to the premises that he was a Licensing Inspector.
- 6) The Nominee, Mr Mulga, admitted that the factual background as presented by Mr Macallister and admitted that the breach of licence condition as alleged had occurred.
- 7) Mr McIntyre advised the Commission that a similar complaint had been lodged against the Licensee in 2001. He conceded that the current licence for Annie's place was confusing and difficult to manage given the varying requirements for the sale of alcohol to lodgers and to members of the public with or without supper or a substantial meal. Mr McIntyre informed the Commission that, in his opinion, the practice of locking the entrance gate to the premises at 9:00pm was not an absolute means of security in terms of restricting access to the premises by non-lodgers.
- 8) Mr Mulga submitted that the breach occurred as his bar staff were caught unawares on the night in question. The incident occurred at a busy time when lodgers usually return to the Premises after a day out. Staff would have assumed Mr MacAllister was a lodger when he was served alcohol. Mr Mulga stated that the licence conditions were difficult to enforce allowing there were different rules for lodgers, patrons who had a meal or supper and patrons who simply purchased alcohol.
- 9) Mr Mulga advised that the nature of his business was a backpacker lodge and ancillary services. He agreed that the current licensing conditions were difficult to manage and informed the Commission that he had considered making an application to have the licence conditions amended to make the premises more manageable. To date he has not made that application. Mr Mulga also informed the Commission that Annie's Place held a full take

away licence however take away alcohol had not been sold from the premises since he had taken over as Licensee.

SUBMISSIONS ON PENALTY

- 10) Mr McIntyre described the current licence conditions as a “nightmare” and recommended to the Commission that the licence be amended to remove the condition of licence that allows the sale of take away alcohol. He informed the Commission that the Licensee had admitted the breach in 2001 and now appeared to be falling back into bad habits in terms of monitoring the sale of alcohol to members of the public other than ancillary to a meal or supper. Mr McIntyre suggested that were the licence to retain the current conditions there was a requirement to define what constitutes “a meal” and “supper” if the licence conditions were to be properly complied with.
- 11) Mr McIntyre submitted that there was an issue with members of the public accessing the premises after 9:00 pm. Whilst he was not pressing for a suspension of licence, Mr McIntyre submitted that a condition should be inserted into the licence requiring the access gate to be manned by a security officer after 9:00 pm to prevent members of the public from entering the premises without alerting staff to their presence. Alternatively, Mr McIntyre suggested a CCTV camera should be placed near the gate to enable bar staff to monitor persons entering and leaving the premises.
- 12) In response Mr Mulga advised that a licence condition requiring a security officer would be extremely onerous in terms of cost. He submitted that the licence conditions should be varied to provide that whilst supper would be available when the premises were open it would not be obligatory that the sale of alcohol in the Café Supper Club be ancillary to a meal.

MATTERS TAKEN INTO CONSIDERATION

- 13) The Commission agrees with the submissions of both parties that the licence conditions currently attached to the licence for the Premises are confusing and difficult, if not impossible, to properly manage. The conditions of licence require a review to ensure that not only are they workable but also that the operation of the business and the sale of alcohol is consistent with other venues of a similar nature.
- 14) However, the Commission in this instance is considering a complaint that the Licensee has breached a condition of licence. It is not currently tasked with consideration of possible variation of licence conditions that may make the licence more workable and easier to manage. The Commission does however strongly recommend that it is in the interests of the Licensee to make an application for variation of the conditions of Licensee in line with similar venues.

- 15) The Commission notes the submissions in respect of security of the entrance to the premises after 9:00 pm, that is the time the “supper condition” comes into effect. However, the Commission does not see that this issue is relevant in the context of the current complaint. Inspectors MacAllister and Barry entered the Premises at approximately 11:10 pm on Friday 15 August 2008. They were entitled to do so as the Supper Club was open to members of the public from 9:00 pm until 1:00 am on the Saturday.
- 16) The Inspectors were also entitled to purchase alcohol, so long as this was sold ancillary to supper. Inspector MacAllister was not questioned about whether he intended to have supper prior to being provided with the alcohol. In fact, when Mr MacAllister queried the availability of food he was advised that there was a snack machine in the foyer. Rightly in the Commission’s view, it was not submitted by the Licensee during the course of the hearing that access to the snack machine satisfied the “supper” requirement. As a result the Commission formally finds that the complaint as alleged is made out and the Licensee has committed a breach of the licence conditions.
- 17) Whilst the Commission considers breaches of licence conditions to be of a serious nature this particular breach must be seen as being at the lower end of the scale in terms of offending. In addition, the Commission notes that the Licensee was found to have committed a similar breach in 2001, albeit that details provided to the Commission of that incident, the hearing and the penalty imposed were particularly brief. Whilst the Commission is not inclined in this instance to impose any additional penalty on the basis of the former breach it does warn the Licensee that any future breaches of the conditions relating to the service of food with alcohol purchases will most likely result in a suspension of the licence.

DECISION

- 18) The Commission determines that the appropriate penalty is a formal letter of reprimand and directs the Director of Licensing to send a formal letter of reprimand to the Licensee. The Commission further directs that the letter be placed on the file of the Licensee to be considered by the Commission if there are any further breaches of the Act by the Licensee.

ADDITIONAL MATTER

- 19) The Commission expresses its concern that Annie’s Place currently operates under the authority of a Public Hotel licence, including the allowance for the sale of liquor for consumption away from the premises. The submissions of the Licensee during the course of the hearing that he does not currently sell alcohol for consumption away from the premises, nor are there plans to do so in the foreseeable future.

- 20) However, the Commission also notes that whilst the current licence allows for the sale of take away alcohol there are no conditions in place relating to the hours when such sales are permitted. The Commission views the current licence held by Annie's Place as somewhat of an anomaly in that it is not the type of venue for which a Public Hotel Licence is the appropriate licence.
- 21) Whilst there may be historical reasons for the existence of the Public Hotel Licence the Commission considers that it is not appropriate in terms of the current business being operated by the Licensee. If the Licensee does not make an application in the near future for amendment to the conditions of the licence, including the type of licence held, the Commission strongly encourages the Deputy Director of Licensing to review the current licence with a view to having the licence amended to properly reflect the current requirements of the Premises and the actual business operated on the Premises by the Licensee.

Philip Timney
PRESIDING MEMBER

13 January 2008