

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>PREMISES:</b>	<b>DALY RIVER ROADSIDE INN</b> Daly River NT
<b>LICENSEE:</b>	Ritytil Pty Ltd
<b>LICENCE NUMBER:</b>	81200388
<b>NOMINEE:</b>	Mr Jeffrey N Wenban
<b>PROCEEDING:</b>	Pursuant to Section 124AAA of the <i>Liquor Act</i> Further Penalty Subsequent to Finding of Guilt
<b>HEARD BEFORE:</b>	Ms Brenda Monaghan (Presiding Member) Mrs Jane Large Mr Walter Grimshaw
<b>DATE OF HEARING:</b>	11 December 2009
<b>DATE OF DECISION:</b>	17 December 2009
<b>APPEARANCES:</b>	Mr Dominic McCormack for Licensee Mr Allan Borg (Inspector) for Director of Licensing

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### BACKGROUND

- 1) On 28 August 2009, the Licensee of the Daly River Roadside Inn (the Premises) pleaded guilty in the Court of Summary Jurisdiction to a breach of Section 102 of the *Liquor Act* (serving an intoxicated person) following an incident at the Hotel on 22 May 2009. No conviction was recorded against the Licensee but a monetary penalty in the sum of \$1,000 and a Victims Levy of \$40 was imposed.
- 2) This matter comes before the Commission for consideration pursuant to Section 124AAA of the *Liquor Act* which states:

#### ***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.*

## **THE HEARING**

3) In order to properly consider this matter and other alcohol-related concerns within the Nauiyu Nambiyu Community, the Commission travelled to the Community on 11 December 2009 to conduct a hearing. Mr McCormack and Mr Borg addressed the Commission on whether or not an additional penalty should be imposed on the Licensee. The Commission has taken into account all submissions made and documentary evidence provided - including the following:

(a) The complaint was brought before the Court by Police following an incident where they observed an intoxicated patron being served a can of beer by a staff member at the premises. At the hearing on 27 August 2009, the Presiding Magistrate was advised that it is very difficult for staff members serving behind the bar to know what was happening in the beer garden. This was a first offence for the Licensee.

(b) Sergeant Rankin for Police advised the Commission that the Nominee normally does a good job but that there was a real shortage of staff at the hotel that meant they were often busy behind the bar and unable to properly monitor patrons – particularly those in the beer garden.

(c) Mr McCormack for the Licensee provided some recent history regarding the change in management from the Community Government Council to the Shire which he submitted had impacted on the overall management of many community services and on the Hotel. He reminded the Commission that the Licensee had supported the training of community members as security staff in 2008 but that it had been difficult to find appropriate people to complete the course and become fully licensed.

- (d) Mr McCormack advised of the recent purchase of a breathalyser for use on-premises and of revised management practices such as rostering changes to ensure proper patron supervision at all times - particularly on Thursday, Friday and Saturday nights.
- (e) Following on from earlier discussions with the Commission, community stakeholders and the Licensee, Mr McCormack reaffirmed the willingness of the Licensee to take proactive steps to train and employ more security at the premises and to agree to the insertion of an appropriate licence condition in the liquor licence to that effect. He also reaffirmed the willingness of the Licensee to improve management of the banned list and to agree to the insertion of an appropriate licence condition to that effect.

## DECISION

- 4) The Commission is well aware that this hearing takes place against a backdrop of a community in crisis with the occurrence of alcohol-related self harm at an unacceptable level. Much of this harm is not related to drinking at the Daly River Roadside Inn but to binge drinking that is occurring in other places - particularly at an area commonly called 'Tent City'. The Commission is aware however that at the time of the incident at the Hotel on 22 May 2009, there was insufficient supervision and security to properly supervise patrons and to ensure responsible service of alcohol.
- 5) The maximum penalty that the Commission is able to impose for a first offence under Section 124AAA of the *Liquor Act* is one (1) day. The Commission has taken into account the significant steps that the Licensee and Nominee have already taken and have agreed to take in the near future. The most significant matter is the consent of the Licensee to have their licence amended to include conditions regarding security and the banned list.
- 6) The Commission imposes a one (1) day suspension of the licence of Daly River Roadside Inn, that penalty to be imposed on a Friday, being the day of the offence. Taking account however of the co-operative and positive conduct of the Licensee and Nominee since the offence, their previously unblemished record and the changes that they agree to be made to their licence, the Commission further directs that the suspension be totally suspended for a period of twelve (12) months from the date of this decision. If the same, similar or a more serious breach of the licence condition occurs within a period of twelve (12) months from the date of this decision, the one (1) day suspension of the liquor licence will be served. If no further such breaches of the *Liquor Act* occur in the twelve (12) months period, this "suspended suspension" will lapse.

Brenda Monaghan  
PRESIDING MEMBER  
(Legal Member)

21 December 2009