

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>LICENSEE:</b>	<b>The Arnhem Club Inc.</b>
<b>PREMISES:</b>	The Arnhem Club 1 Franklin Street Nhulunbuy
<b>LICENCE NUMBER:</b>	81401120
<b>PROCEEDING:</b>	Complaint Pursuant to Section 48(2) – Breach of Section 119 - Unauthorised Material Alterations and Breach of Section 110 – non-compliance with CCTV Guidelines
<b>HEARD BEFORE:</b>	Mr Philip Timney (Presiding Member) Mrs Jane Large Mr David Brooker
<b>DATE OF HEARING:</b>	11 May 2011
<b>APPEARANCES:</b>	No appearances – Hearing conducted on the papers

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### BACKGROUND

- 1) The Director of Licensing lodged complaints pursuant to Section 48(2) of the *Liquor Act* (“the Act”) against the Licensee of The Arnhem Club alleging a breach of Section 119 of the Act in undertaking material alterations to the premises without the approval of the Commission and a breach of Section 110 of the Act in failing to comply with the licence conditions relating to the CCTV Guidelines.
- 2) On 6 November 2010 Licensing Inspectors conducted a general inspection at The Arnhem Club premises. During that inspection the Inspectors observed that, in October 2010, the Licensee had conducted an unauthorised material alteration including the construction of a new bar area known as the “Cazbah” within its licensed area, creating a point of sale for liquor. The Inspectors also noted that the new bar area failed to comply with the licence condition relating to Camera Surveillance Requirements.

- 3) Following the inspection the Nominee of the premises was directed to cease trading from the new bar area until approval for the material alterations was obtained from the Commission. The Licensee complied with that direction and the material alterations were subsequently approved by the Commission on 8 February 2011.
- 4) By letter dated 6 November 2010, Mr David Sweet of Cridlandsmb responded to the complaint on behalf of the Licensee. Mr Sweet denied that the breaches as alleged had occurred on the basis the alterations were not of a material nature and were undertaken to enhance the visibility of the beer garden area of the premises. It was subsequently conceded on behalf of the Licensee that the alterations did fall within Section 119 and that approval should have been obtained from the Commission.
- 5) On 17 March 2011 the Commission was in attendance in Gove for business not related to this complaint. The Commissioners tasked with hearing the complaint sought and obtained permission from the legal representative of the Licensee to conduct a viewing of the premises to properly inform themselves of the nature of the alterations for the purpose of the Hearing in respect of alleged breaches.
- 6) During the course of that viewing the Commissioners noted that the alterations provided a service point to patrons utilising the beer garden area which also serves as the smoking area for patrons. The Commission was advised by Mr Nigel Baker, Financial Director of the Arnhem Club, that when the alterations were commenced he was of the opinion that approval was not required as the new service area was built to achieve compliance with the new requirements of the *Tobacco Control Act*. He also noted that the Casbah service area was only operational during busy periods and was aimed at allowing patrons using the beer garden to purchase drinks without having to enter the main service area inside the building.
- 7) The Commission noted that the alterations were an enhancement to the premises and, had approval been sought prior to construction, this would most likely have been granted as a matter of course.

## HEARING

- 8) With the consent of the parties, and as a means of avoiding the costs of staff of The Arnhem Club having to attend a Hearing in Darwin, the Commission determined to conduct a Hearing on the papers only.
- 9) The Commission, having considered the papers and having viewed the premises, determined that the breach was of a technical nature and not one that had caused any harm in terms of the conduct of the business of the Club. It was also noted that the material alterations had ultimately been approved by the Commission without comment and prior to the resolution of the complaints lodged by the Director.

- 10) The Commission was satisfied with the explanation for the failure to obtain approval given by Mr Baker during the course of the viewing and has determined that the appropriate penalty is a caution to the Licensee to ensure that any future material alterations at the premises are authorised by the Commission prior to commencement of the works.

## **DECISION**

- 11) Section 66 of the Act provides that the Commission may suspend the licence of a Licensee where the Licensee has contravened or failed to comply with the Act or a licence condition and the Commission is satisfied that the contravention or failure is of sufficient gravity to justify the suspension of the licence. In this instance the Commission is not satisfied that the breach is of such a serious nature as to warrant any suspension of the licence.
- 12) The Commission notes that the Licensee admitted the breach of Section 119 at the first opportunity and that the breach arose as a result of a misunderstanding on the part of employees of the Licensee and not as a result of any deliberate behaviour. The Commission also notes that the Licensee, through Mr Baker, has co-operated fully with the Commission in its enquiries, including allowing Commissioners to view the premises prior to the Hearing and without the presence of its legal representatives. In addition, the Licensee was denied use of the new Casbah server area for some months following the notification of the complaint and the ultimate approval of the material alterations.
- 13) The Commission has determined to issue a caution to the Licensee that any future breach of the licence conditions or the Act may result in a suspension of the licence. The Commission requests that the Director retain a copy of this decision on the file for the Licensee for possible future reference.

Philip Timney  
PRESIDING MEMBER

30 May 2011