

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **Stuart Hotel**
Cnr Katherine Terrace and Warburton Street
KATHERINE NT 0850

LICENSEE: TAD (NT) Pty Ltd

NOMINEE: Mr Athol Damian Schmidt

LICENCE NUMBER: 80315480

PROCEEDINGS: To undertake a Hearing into Complaints pursuant to Sections 121(1) and 110 of the *Liquor Act*, namely failure to remove a person who is intoxicated and camera surveillance breaches. Also, pursuant to Sections 45, 54 and 56(1) of the *Private Security Act*, namely providing documents that were false or misleading, failing to ensure all licensed crowd controllers were wearing prescribed identification and failing to accurately maintain register of crowd controllers.

MEMBERS: Mr Richard O'Sullivan (Chairman)
Mr David Brooker
Mrs Jane Large

ATTENDEES: Mr John Lawrence, instructed by Mr Michael Whelan for Licensee
Mr Athol Schmidt, Nominee
Inspector Mark Wood for Director of Licensing
Inspector Shane McCorkell
Inspector Pippa Pech

DATE OF HEARING: 10 August 2011

- 1) At the commencement of the Hearing Inspector Wood, on behalf of the Director of Licensing, advised the Northern Territory Licensing Commission ("the Commission") that the complaints under the *Private Security Act* were being withdrawn due to a documentation problem and may be re-laid at a

later date. Further, the complaint under Section 121(1) of the *Liquor Act* (“the Act”) was being withdrawn unconditionally.

- 2) Inspector Wood then outlined the facts relating to the remaining complaint, namely, the Camera Surveillance breach, (under Section 110 of the Act a Licensee must not contravene licence conditions). The Licence of the Stuart Hotel has a licence condition requiring CCTV coverage as approved by the Director. His outline of facts was as follows:
 - On 7 December 2010 Inspector Graham Tribe attended the Stuart Hotel to conduct an audit of the camera surveillance system. During this audit several deficiencies were identified by the Inspector and discussed with the nominee Mr Athol Schmidt. A letter providing the full Audit Report was forwarded to the Licensee by Inspector Tribe on 20 December 2010.
 - Following an investigation into an incident at the premises on 19 December 2010 a request for footage from all cameras relating to the Club 23 portion of the licensed premises was sent by Inspector Pech to the premises on 20 December 2010. A request was also made for a copy of the security register.
 - When the footage was received it was discovered that cameras 6 and 12 were not of sufficient quality to clearly identify individuals. Also, the recordings of all cameras were not provided with imbedded player software and camera 12 was found to be deficient only covering a radius of ten metres and was not of sufficient capability.
 - The footage provided did not cover the whole bar service area, was partially obscured and was on unmarked and unlabelled disks. There was no indication as to the contents contained on the disks, also, the timing on the footage provided appeared to be incorrect by fifteen minutes and there had been no check of the timing of the system in the month prior to 18 December 2010.
 - Entries in the security register on 20, 26 and 27 November 2010 and 11, 17 and 18 December 2010 incorrectly indicate that the responsible person for checking the camera surveillance recordings on those dates was Mr Damien Kaestner.
- 3) Mr Lawrence on behalf of the Licensee entered a plea of guilty to the complaint and agreed with the facts outlined above.
- 4) Inspector Wood in submission on penalty stated that the Licensee had upgraded the camera surveillance in the Stuart Hotel and recommended a formal reprimand be given together with a Direction under Section 65 of the Act to be issued requiring that, within a twenty eight day period, an audit of

the system be undertaken to ensure it is functioning in line with the Camera Surveillance Plan and in accordance with the Camera Surveillance Guidelines

- 5) The Commission notes that the Act in force at the time the alleged breach occurred and at the time the complaint was laid and referred to the Commission contained a Section 65 as follows:

“65 Commission’s power to give directions

Where a licensee:

- (a) has contravened or failed to comply with a condition of his licence; or*
- (b) has permitted or suffered the premises in respect of which he holds a licence to be so used as to cause undue disturbances of inconvenience to:

 - (i) persons who are lawfully on or at those premises; or*
 - (ii) persons who reside in the neighbourhood of those premises; or**
- (c) has contravened or failed to comply with a provision of this Act or a law of the Territory which regulates, in any manner, the sale or consumption of liquor or the location, construction or facilities of premises which are used for such a purpose,*

the Commission may, from time to time by notice in writing, direct the licensee to take, or to refrain from taking, within such time as the Commission shall in that notice specify, a specified action to rectify or minimise the effects of:

- (d) the licensee’s contravention or failure to comply, referred to in paragraph (a) or(c); or*
- (e) the undue disturbance or inconvenience, referred to in paragraph (b).*

as the case may be.”

- 6) Since that time a new Act has come into force which under Section 65 gives the Director power to *“enter into an enforceable undertaking with a licensee”*. In this instance the Commission powers are derived from the earlier Act which enables the Commission to issue directions.
- 7) Mr Lawrence drew the Commission’s attention to the fact that very little time had elapsed between the Licensee being advised of the deficiencies with the hotel’s camera surveillance system by Inspector Tribe and the incident which resulted in having to provide footage from the system. He submitted that there were difficulties in Katherine getting qualified personnel to fix the system

but this had been done and now it was functional. Mr Lawrence agreed with the penalty suggested by Mr Wood.

- 8) To give effect to the use of the Commission's Direction Powers, which appear specific to giving direction to the Licensee, the Commission directs the Licensee to work with the Director to ensure an audit of the camera surveillance is undertaken within twenty eight days of this decision. The Commission expects the Director to fully comply with arranging this audit.

DECISION

- 9) The Commission accepts the withdrawal of the complaints laid under Section 121(1) of the *Liquor Act* and the *Private Security Act*. Due to the timing of and the type of breaches involved the Commission agrees with the recommended penalty for the Camera Surveillance complaint.
- 10) A letter of reprimand is to be sent to the Licensee and a Direction under Section 65 of the Act be issued whereby within twenty eight days from the date of this decision an audit of the camera surveillance system at the Stuart Hotel is to be undertaken to ensure it is functioning in line with the Camera Surveillance Plan and in accordance with the Camera Surveillance Guidelines

Richard O'Sullivan
CHAIRMAN

September 2011