

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: TIMBER CREEK HOTEL

LICENSEE: Timber Creek Hotel Wayside Inn
Joint Venture Pty Ltd

LICENCE NUMBER: 80304074

DUAL NOMINEES: Mr Clive Edward Stone
Ms Rachael Pauline Stone

PROCEEDING: Complaint Pursuant to Section 48 of the *Liquor Act* - Breach of Section 102

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Mr Philip Timney
Mr Walter Grimshaw

DATE OF HEARING: 24 September 2008

DATE OF DECISION: 13 October 2008

APPEARANCES: Mr Clive Stone and Ms Rachael Stone
Dual Nominees for the Licensee
Inspector Mark Wood for the Director of
Licensing
Inspector Marc MacKenzie
Ms Catherine Smith
Mr Gordon Smellin

BACKGROUND

1. On Thursday 8 May 2008 Licensing Inspectors Mark Wood and Marc MacKenzie travelled to Timber Creek for the purpose of attending a meeting convened at the Timber Creek Town Council regarding changes brought pertaining to the sale and consumption of alcohol by the enactment of the *NT Emergency Response Act* of 2007 (CTH).
2. Further to this meeting, in conjunction with Timber Creek Police, Inspectors Wood and MacKenzie carried out surveillance operations throughout the afternoon and evening of the same date.

3. During the afternoon it was noted a large number of persons were congregating at the Timber Creek Hotel and were being continually served alcohol. A gentleman described as being "an obese Aboriginal male" was displaying obvious signs of intoxication. Whilst Inspector Wood conducted a transaction at the Timber Creek Hotel food takeaway he noticed the abovementioned male also making a transaction.
4. At the same time Inspector Wood overheard a conversation between two (2) female employees serving in the area, relating to the level of sobriety of the Aboriginal man in question and one of the employees was overheard to describe the man in words to the effect of "he's blind" or "he's pissed".
5. Immediately following, the male in question presented himself beside Inspector Wood at the bar and ordered a VB. This was ordered from one of the female employees who previously had been party to discussion or comments on the issue of the patron's sobriety. He was served a can at 6.02pm. The same male was again served another can of VB at 6.20pm.
6. The male in question was subsequently identified by Timber Creek Police as Mr Roy Hector. Inspector Wood completed a Statutory Declaration in relation to this matter which was included in the Hearing Brief.
7. Inspector MacKenzie and Senior Constable Bellman also completed Statutory Declarations in relation to this matter, also contained in the Hearing Brief.
8. Mr Clive Stone, the Dual Nominee was duly informed by mail in a letter sent from the Director of Licensing on 19 July 2008 that a complaint had been laid. This was the first advice Mr Stone had had in relation to this matter.

CONSIDERATION OF THE ISSUES

9. A duly convened Hearing was held at the Timber Creek Court House on 24 September 2008. It was presided over by Chairman O'Sullivan in conjunction with Commissioners Timney and Grimshaw.
10. Inspector Wood outlined the complaint and the circumstances surrounding the same.
11. An invitation was extended to Mr Clive Stone, who saw fit to appear without legal representation to respond to the breaches and he admitted the offence with humility and general contrition.
12. Ms Rachael Stone, Dual Nominee explained the ownership and management structure of the two (2) liquor outlets in Timber Creek including the structure and history of the joint venture between the Stone family and the Ngallwurru-Wuli Association relating to the Timber Creek Wayside Inn.

13. Mr Stone went on to explain the situation regarding the responsible service of alcohol and the staffing arrangements surrounding the two licensed outlets and pointed out the problems with staffing a remote enterprise such as his. At Hearing he outlined the impracticalities associated with staff accreditation regarding the Responsible Service of Alcohol course, when a large number of casual staff are backpackers and are only seeking short term employment.
14. He further explained voluntary initiatives that have been implemented to combine the adverse affect of the sale and consumption of alcohol and the controls they have in place. These include:
- a) A register of all takeaway sales at both liquor outlets (this reportedly has been a major help to Police over a long period of time);
 - b) Only light beer is sold between 10.00am and 12.00noon daily;
 - c) The sale of spirits is completely banned on the Thursday and Friday of the CDEP pay weeks;
 - d) No takeaway sales of alcohol of any description after 7.00pm nightly;
 - e) Both licensed outlets close at 9.00pm on the Thursday and Friday of the CDEP pay weeks;
 - f) Any persons causing disturbances of any nature in either licensed outlets are served with a Trespass Notice that is kept in force for a period of no less than twelve (12) months;
 - g) Proactivity and ongoing consultation with Police and local Aboriginal Associations regarding the Alcohol Management Plan and harm minimisation strategies;
 - h) Security systems and CCTV cameras to be installed in both outlets at a cost of no less than \$20,000 for each locality;
 - i) Roster of employees at all times to include experienced staff; and
 - j) Ongoing consultations between all interested parties, ie Aboriginal Associations, Health, Education, Police and Council regarding management decisions of both outlets (noting that many management policies now in place have been as a result of trial and error and consultation with these parties over a twelve (12) year period).
15. The Chairman explained to Mr Stone the options the Commission has in relation to penalty and invited Mr Stone to submit what he would perceive as being a fair and just penalty under the circumstances.
16. After a short adjournment granted in order for Mr Stone to consider this issue the Hearing was reconvened and Mr Stone suggested a stern reprimand in writing would be appropriate.

17. In response to this Inspector Wood addressed the Commission and voiced his opinion regarding penalty and mentioned the issue of recklessness regarding this breach and further mentioned the conversation that took place between the staff when the phrase “he’s pissed” or “he’s blind” was heard to be voiced regarding Mr Hector’s state of sobriety. Because of these issues he felt the penalty needed to be more substantial than a stern reprimand.

PENALTY

18. In considering a suitable penalty the Commission took into account the unusual situation of the joint venture between the Stone family and the Ngallwurru-Wuli Association with relation to the ownership and management of both the Timber Creek Hotel (owned and managed by the Stone family) and the Timber Creek Wayside Inn (owned by the joint venture and managed by the Stone family) and the extreme pressures that are continually brought to bear on the management group from the joint venture partners regarding increased financial returns. A penalty involving the closure of the Timber Creek Hotel would result in patrons simply moving to the Wayside Inn, a venture also operated by the Stone Family.

19. The Commission considered the remoteness of the town with regard to distances travellers faced in relation to availability of facilities and refreshments and the adverse affect an extreme penalty could have on them (only the Timber Creek Hotel currently serves meals).

20. The Commission was also very mindful of the evidence given relating to the conversation that took place between the staff on the date in question regarding the sobriety of Mr Hector. However the Commission does note that one of the staff had no recollection of the conversation relating to Mr Hector appearing to be “pissed” or “blind”. Nonetheless Mr Hector was subsequently served on no less than two (2) further occasions.

21. Whereas the Commission regards the service of alcohol to intoxicated persons a very serious offence it was impressed by the voluntary measures that have been invoked over a long period of time and the genuine alcohol control efforts by the Stone family. The Commission also took regard of the unblemished licence history of the current Licensee and Nominees who have been operating the business for a period of twelve (12) years.

DECISION

22. The Commission therefore directed a one (1) day suspension of the licence of the Timber Creek Hotel to be imposed and this suspension to be totally suspended for a period of twelve (12) months from the date of the Hearing and furthermore this determination to be maintained by the Director on the file of the Licensee.

Richard O'Sullivan
CHAIRMAN

13 October 2008