

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Desert Oaks Motel
Licensee:	Elrunda Motel Pty Ltd
Licence Number:	80100446
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 Richard O'Sullivan (Chairman) Mr Philip Timney Mr Paul Fitzsimons
Date of Hearing:	25 November 2008
Appearances:	Mr Stephen Williams for the Licensee Deputy Director Chris McIntyre for the Director of Licensing Inspector Paul Drake

Background

- 1) On 6 February 2008 Mr Stephen Williams was temporarily appointed as Nominee to the Desert Oaks Motel ("the Motel"), Erldunda, the Licensee being Erldunda Motel Pty Ltd. His position as Nominee was subsequently confirmed on 27 August 2008 at which time the Alice Springs office of Licensing, Regulation and Alcohol Strategy of the Department of Justice faxed a copy of the Motel Liquor Licence to Mr Williams. Immediately after faxing the licence Inspector Leanne Daniels telephoned and discussed details of the licence conditions with the Nominee.
- 2) The takeaway condition provides takeaway hours from 12:00 midday to 21:00 hours Sunday to Friday and from 10:00 hours to 21:00 hours Saturdays and Public Holidays.
- 3) On 1 September 2008 Inspectors Murray MacAllister and Paul Drake visited the premises. At around 21:05 hours the Inspectors bought takeaway food and consumed it at the Public Bar along with a stubby of beer each purchased at the bar. At 21:20 hours Inspector MacAllister ordered two (2) 375ml stubbies of XXXX Gold for takeaway. He was served and paid for this alcohol.
- 4) The Inspectors then spoke to Mr Mark Harding, who identified himself as the Manager, regarding the restriction on takeaway after 21:00 hours applying to the Motel.
- 5) Mr Harding informed the Inspectors that he was not aware of the takeaway hours (in fact he gave varied responses on the matter of his knowledge of takeaway sales hours). Mr Harding was, however, aware that a copy of the licence had been faxed to the Nominee, Mr Williams only days before.
- 6) He was unable to produce a copy of the Motel licence, which under conditions of the licence, is required to be available for inspection at any time.
- 7) Subsequently the Inspectors laid a complaint under Section 48(2) of the *Liquor Act* ("the Act") against the Motel for two (2) breaches of Section 110 of the Act:

110 Licensee to comply with conditions

A licensee shall not contravene, or fail to comply with, a condition of his licence.

- 8) It is a condition of the Erlunda Motel Pty Ltd Liquor Licence that:

Takeaway Hours: *Liquor shall be sold only for consumption away from the premises during the following hours:*

Sunday to Friday inclusive between the hours of 12:00 and 21:00; and Saturday and Public Holidays between the hours of 10:00 and 21:00.

Licence to be *This licence or a fair copy of it shall be kept on the*

Available for *licensed premises at all times and shall be*

Inspection: *immediately available for inspection by any person.*

- 9) The complaint laid is that there were two (2) breaches, namely sale of takeaway out of hours and failure to make a copy of the licence available.
- 10) The Commission, on receipt of the complaint, at its meeting of 15 October 2008 determined to conduct a hearing into the matter.

Hearing

- 11) Inspector Paul Drake outlined the circumstances leading to the laying of the complaint under Section 48(2) of the Act. He also advised the Commission that the reason for visiting the premises and undertaking the covert operation was based on information received from the Imanpa Police alleging that the Motel was selling takeaway out of its licensed hours.
- 12) His statement confirmed that the Inspectors were served takeaway alcohol after 21:00 hours and that the Manager of the premises was unable to comply with the request to provide a copy of the Motel liquor licence.
- 13) The Motel Nominee, Mr Stephen Williams admitted to the breach of licence conditions and acknowledged the occurrence of events as outlined by Inspector Drake. He advised the Commission that there had been some confusion over the actual takeaway hours applying to the Motel as the original licence issued to the premises had been lost or misplaced by the previous Nominee.
- 14) He also advised that at the time of the breach he had only been permanently confirmed as the Nominee for a matter of days (confirmation was made on 27 August 2008). In defence of the breach he submitted that while there was some confusion over takeaway hours, the Motel did have in place a policy or agreement to not sell takeaway to Imanpa residents at any time beyond 18:00 hours seven (7) days a week, indicating the good will of the Licensee and co-operative approach on the sensitive issue of takeaway alcohol.
- 15) He added that being in a remote location the Motel had a high turnover of staff which added to the difficulty of ensuring staff were aware of trading and licence conditions adding that he had presumed the takeaway hours extended to 22:00 hours as this was generally the case with most hotel and tavern licences in Central Australia. He further added that processes and procedures had now been put in place to ensure staff induction and training.
- 16) On behalf of the Director of Licensing, Deputy Director Chris McIntyre advised the Commission it was of concern that no procedures were in place leading up to the breaches of licensing conditions, that the Nominee was not aware of what hours applied to takeaway liquor, indicating a shortfall in the knowledge of legal requirements, and as a consequence, there needed to be requisite procedures put in place.

Submissions on Penalty

- 17) In submission on penalty it was suggested to the Commission by the Deputy Director, Chris McIntyre that the Nominee develop an outline of induction procedures for staff and that such procedures form a manual be submitted to the Deputy Director Southern Region for his approval.
- 18) Deputy Director Chris McIntyre also submitted that as only ten per cent (10%) of the Motel sales related to takeaway alcohol, the imposition of a suspension of takeaway trade would not have a significant financial or deterrent impact on the business. He also added that the remote location of Erldunda and the dependence for supplies by travellers means a licence suspension would likely place more of an impost on tourists than the Licensee.
- 19) He sought that the Commission impose a camera surveillance condition on the licence and for this camera surveillance to be operative and cover all bar and alcohol takeaway areas during all trading hours. He further strongly recommended that long term employees undertake a Responsible Service of Alcohol ("RSA") certified course.
- 20) In response to Deputy Director McIntyre's submission, the Nominee, Mr Stephen Williams agreed with the suggested penalty and added that the owners would comply with these proposed conditions including the requirement of staff to undertake RSA.

Decision

- 21) The Commission warns that Licensees and Nominees bear a significant responsibility attached to any licence to serve and sell alcohol. While remoteness of some licensed outlets does impose greater hardships in meeting licence conditions, including inducting and training staff into adopting procedures in conforming with licence conditions, it does not absolve them of any transgression or breach of their licence requirements.
- 22) The Commission agrees with Deputy Director McIntyre that a suspension of the takeaway licence would probably give rise to greater inconvenience and hardship to travellers who are patrons of the Motel than to the Licensee, given that only ten per cent (10%) of sales of the Motel relate to takeaway alcohol.
- 23) The Commission also takes into account the early admission by the Nominee of the breaches and notes this early admission as a mitigating factor in determining penalty.
- 24) The penalty imposed by the Commission is as follows:
 - a) Staff induction procedures are to be developed to the satisfaction of the Deputy Director Southern Region.
 - b) Camera surveillance is to be installed over the bar and alcohol takeaway areas within three (3) months of the date of hearing, that is by 25 February 2009.
 - c) The following condition is to be inserted in the liquor licence:

Camera Surveillance Requirement: *The Licensee shall comply with such requirements for and in relation to camera surveillance as the Commission shall at any time notify to the Licensee in writing as being thereafter applicable to the licensed premises.*
 - d) All staff involved with alcohol sales are to undertake and complete an RSA certified course within one (1) month of commencement of employment.
 - e) A copy of this decision to be placed on the file of the Licensee for reference by the Commission in the event of any further breaches of the Act or licence conditions.

Richard O'Sullivan
Chairman

11 December 2008