

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Jingili Foodland
<b>Licensee:</b>	Deckora Proprietary Limited
<b>Licence Number:</b>	80900664
<b>Nominee:</b>	Terry Lee Hall
<b>Proceeding:</b>	Complaint pursuant to Section 48 of the <i>Liquor Act</i> alleging the sale of Liquor to Intoxicated persons on 10 December 2004
<b>Complainant:</b>	Dr Chris Burns
<b>Heard Before:</b>	John Flynn (Acting Chairman) Brenda Monaghan Paul Costigan
<b>Date of Hearing:</b>	14 April 2005
<b>Date of Decision:</b>	Ex tempore decision given at hearing on 14 April 2005-Written Reasons for decision now given
<b>Appearances:</b>	Mr Terry Hall-Licensee Dr Chris Burns-Complainant Mr Doug Bell-Director of Licensing

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1. The hearing of the complaint made by Dr Chris Burns pursuant to section 48 of *the Liquor Act* proceeded on 14 April 2005. Such a complaint, if proven, would be in breach of section 102 of the *Liquor Act* which prevents licensees or their agents from supplying liquor to intoxicated persons.
2. The evidence of Dr Burns at the hearing was that on 10 December 2004, he noticed a group of 5 persons in the near vicinity of Jingili Foodland. Dr Burns recognised one man called Mark Winter. Mr Winter was consuming alcohol. One of the 2 women in the group was sitting against the outside wall of the foodstore with 2 four- litre wine casks in plastic bags beside her.
3. Dr Burns stated in his complaint and in oral evidence that the entire group appeared to him to be intoxicated with unsteady gait and posture, disinhibited behaviour and slurred speech. Those approached by him at close quarters smelt of alcohol.
4. Dr Burns approached Mr Winter who indicated to him the female member of the group who had purchased the alcohol at Jingili Foodland. When questioned by him, this woman confirmed that she had made her purchases at the shop. At the time of this conversation with Dr Burns, she appeared to him to be intoxicated.
5. Dr Burns then entered the shop and spoke to the licensee Terry Hall. His evidence is that Mr Hall repeatedly denied selling liquor to Mark Winter but appeared to evade responding to the question as to whether or not he had sold liquor to a woman in the group.
6. The licensee Mr Hall then gave evidence. He admitted selling alcohol to many people during the day but denied selling alcohol to any intoxicated person. He could not recall any particular sales made or whether he had in fact sold liquor to the persons outside. He also disagreed with the evidence of Dr Burns and denied that those persons outside the shop were intoxicated at the time of Dr Burn's complaint on 10 December 2004.

7. In considering whether or not the group members were intoxicated at the time of complaint, the Commission considered the evidence of both Dr Burns and Mr Hall. The Commission found Mr Hall's demeanour when speaking about this issue was less forthright than that of Dr Burns and preferred the evidence of Dr Burns on this issue.
8. The Commission also preferred Dr Burn's evidence as regards the conversation between himself and Mr Hall on the day in question-namely 10 December 2004. It noted the evasive nature of Mr Hall's responses to Dr Burns on that day when he was asked specifically whether or not he had sold alcohol to a woman in the group. Further, as regards this issue, Mr Hall remained evasive in his written response to the complaint.
9. Despite the evasive nature of some of Mr Hall's evidence, were the Commission to find the complaint substantiated, it would be doing so based on unsatisfactory evidence being:
  - a) hearsay evidence that liquor was purchased at Jingili Foodland with that evidence being potentially unreliable in that it relates to conversations between Dr Burns and two intoxicated persons; and
  - b) even if the liquor was purchased at Jingili Foodland, there is no clear evidence of the identity of the person who purchased it at some earlier stage (time unknown) and no evidence to support a conclusion that that person was intoxicated at the time of purchase.
10. To uphold the complaint in these circumstances would be unsafe and we decline to do so. It is emphasised however, that had the complaint been upheld, the conduct in question would have been considered very serious and suspension of the licence would certainly have followed. Further, the Commission expresses its concern regarding the large amount of wine sold in casks at Jingili Foodland in comparison to other sales and the Licensee is reminded to be careful to assess the sobriety of his customers when they intend to purchase alcohol.

John Flynn  
Acting Chairman

April 2005