

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Wurankuwu Aboriginal Corporation Wurankuwu Resource Centre Wurankuwu NT 0822
Licence Number:	81415350
Licensee:	Buffalo Trading Pty Ltd
Nominee:	Robert Tipungwuti
Proceedings:	To undertake a Hearing into the control and management of Licence Number 81415350
Members:	Mr Richard O'Sullivan (Chairman) Ms Cynthia-Lee Bravos Mr Walter Grimshaw
Attendees:	Mr David Story, Counsel for the License Inspector Graham Tribe for the Director of Licensing
Date of Hearing:	5 September 2011

Background

- 1) On 27 June 2011, the Director of Licensing ('the Director') advised the Northern Territory Licensing Commission ('the Commission') that the Department of Justice's Licensing, Regulation and Alcohol Strategy (LRAS) had become aware of anomalies surrounding Licence Number 81415350 ('the Licence').
- 2) The Director recommended to the Commission that the Licence be suspended until such time as the licence authority is amended from 'Club (Incorporated)' to an 'On Licence', standard club conditions are removed from the Licence and the Licence is transferred to the person or body corporate that will be the entity controlling and operating the licence.
- 3) Subsequently, the Commission determined to suspend the Licence indefinitely. The suspension notice advised that the Licence was suspended *"until such time as the licensee resolves the issues surrounding the actual management of the business under the licence."*
- 4) On 21 July 2011, the Director advised the Commission that LRAS had received written correspondence from the legal representative of the Licensee in relation to the suspension of the licence. The Director recommended that the Commission consider the response and if deemed necessary, hold a Hearing into the future of the Licence.
- 5) On 25 August 2011, the Commission advised relevant parties that it had determined that it would hold a Hearing regarding the anomalies associated with the management of the Licence.

The Hearing

- 6) On 5 September 2011, the Commission held a Hearing into the future of the Licence.
- 7) Upon review of the Hearing Brief submitted to the Commission by the Director, submissions at the Hearing by both Counsel on behalf of the Licensee and Mr Tribe on behalf of the

Director and independent research undertaken by the Commission, the Commission is of the view that it is likely that the following chronology of events is a reasonably accurate and relevant record of events to date:

- **4 December 1995** Licence Number 81415350 issued to Buffalo Trading Pty Ltd ('the Licensee') for the premises located at Wurankuwu Aboriginal Corporation, Wurankuwu Resource Centre, Wurankuwu NT 0822.

The nominee for the Licence was listed as Mr Robert Tipungwuti.

The category of licence was listed as Club -(Incorporated)
- **12 July 1999** Nominee amended to Chales Tipungwuti
- **17 November 2003** Nominee amended to Robert Tipungwuti
- **1 February 2005** The Licensee commenced a management agreement with Mr John Drew and Mr Daniel Flinn to operate the retail supermarket and the licensed premises at Wurankuwu Community, Bathurst Island. The management agreement was for a period of 6 years with an option for a further two periods of 3 years each. The management agreement specified that the Licensee was to continue as the Licensee and that *'a Director or some other suitable person shall be the Nominee of the Licence.'*
- **23 January 2006** The Commission determined, amongst other things, that as a result of numerous breaches of the *Liquor Act* and licensing conditions between mid 2004 and September 2005, that the Licence was to be immediately amended to reflect that Mr Drew was to be included on the licence as a co-nominee with Mr Robert Tipungwuti.
- **7 April 2006** Nominee amended to Robert Tipungwuti and John Drew
- **14 December 2006** The Licensee leased the retail supermarket and the licensed premises at Wurankuwu Community to Mr Stewart Blair and Ms Marselina Blair
- **Sometime in 2006** Mr Blair purchased the business being the licensed club and general store from Mr Drew
- **14 January 2007** Buffalo Trading Pty Ltd de-registered (Australian Securities and Investments Commission)
- **29 March 2007** Nominee amended to Robert Tipungwuti
- **11 May 2007** Nominee amended to Robert Tipungwuti and Stewart Blair
- **24 October 2009** Wurankuwu Aboriginal Corporation de-registered (Registrar of indigenous Corporations)
- **3 February 2011** Director of Licensing sent Show Cause letter to Buffalo Trading Pty Ltd and dual nominees Mr Robert Tipungwuti and Mr Blair in relation to Buffalo Trading Pty Ltd being de-registered and Mr Blair having been charged with a criminal offence
- **15 February 2011 Licence suspended by the Commission for a period of 7 days**
- **22 February 2011** Licence suspension lifted
- **4 April 2011** The Licensee signed a management agreement with Mr Darren Spurgeon and Ms Louise Cumming (which was due to commence on 20 June 2011) to operate the retail supermarket and the licensed premises at Wurankuwu

Community, Bathurst Island. The management agreement was for a period of 5 years with an option for a further two periods of 5 years each. The management agreement specified that the Licensee was to continue as the Licensee and that *'a Director or some other suitable person shall be the Nominee of the Licence.'*

- **12 April 2011** Mr Blair advises LRAS of his resignation as dual nominee
 - **April – June 2011** Mr Blair employed Mr Les Pavan to manage the business
 - **11 May 2011** LRAS determine that Buffalo Trading Pty Ltd is again registered as its status indicates registered on a company extract
 - **24 May 2011** Nominee amended to Robert Tipungwuti
 - **Sometime in May 2011** Mr Spurgeon and Ms Cumming advised LRAS that they had purchased the retail supermarket and the licensed premises and that they wished to arrange a change of nominee with Buffalo Trading Pty Ltd remaining as the Licensee
 - **17 June 2011** Application for the Transfer of the Licence from Buffalo Trading Pty Ltd to FACT Pty Ltd (company being established by Mr Spurgeon, Ms Cumming, Mr and Mr Mark Ellenden and Ms Thanyaporn Ellenden) made to LRAS
 - **27 June 2011** The Director advised the Commission LRAS had become aware of anomalies surrounding the Licence
 - **8 July 2011 The Commission suspended the Licence indefinitely**
 - **8 August 2011** Mr Spurgeon and Ms Cumming purchased the business being the licensed club and general store from Stewart Blair as trustee of the Stewart Blair Family
- 8) The Director contests that LRAS were not kept informed of the lease and management arrangements pertaining to the premises known as the Wurankuwu Club by the Licensee.
- 9) The Commission notes that on 11 June 2011, Mr Robert Tipungwuti in written correspondence advised LRAS that in relation to the management arrangement between the Licensee and Mr Blair:

It was my belief that the Liquor Commission was aware of this arrangement [the management arrangement with Mr Blair] as I have had several meetings etc both in Darwin and on the club premises over many years with the licensing inspectors and have openly communicated to the Inspectors and Commission about the day to day management of the club.

It is understood by the Commission that reference to the Liquor Commission in this instance is in fact a generic reference to LRAS.

- 10) Mr Tipungwuti, however, submitted in later correspondence that he accepted it was his responsibility to *"ensure proper conformity with the requirements of the liquor act."*
- 11) The Commission also notes that in undated correspondence from Mr Blair to LRAS, Mr Blair states:

the arrangement Robert and I had was openly discussed and never queried by the Liquor Commission or the liquor inspectors. It is both Robert and my understanding that everything was above aboard (sic), particularly as the outgoing manager and I had a meeting with the licensing inspector prior to my take-over of the club in December 2006

It was my belief that the Liquor Commission was fully aware of this management agreement due to many visits and meetings from licensing inspectors over the years on the club premises and in the Darwin office.

Again, it is understood by the Commission that reference to the Liquor Commission in this instance is again in fact a generic reference to LRAS.

- 12) Counsel for the Licensee submitted that whilst there has been a number of administrative deficiencies by the Licensee that have arisen from time to time, that the Commission should take into account that the Nominee for the Licence is unable to read and that this may go some way to explaining the anomalies.
- 13) Counsel further submitted that the Licensee was in support of recommendation 1 and 2 contained in the Hearing brief. Namely that the conditions of the licence be varied in order to amend the licence authority from "Club (Incorporated)" to "On Licence" and to remove the standard club conditions as well as to transfer the licence to the person, or body corporate, that will be controlling and operating the licence.
- 14) The Director indicated to the Commission that there was support for this approach, subject to relevant probity checks.
- 15) Evidence was also provided to the Commission by Sergeant (Sgt) Michael Lunney who is the current Office in Charge of Nhulunbuy Police Station. Sgt Lunney advised the Commission that since he had been posted to Nhulunbuy, Police had not had many calls regarding violence and anti-social behaviour in the Wurankuwu community. Sgt Lunney further advised that on the one occasion he had seen the club operating, that it seemed to be operating quite well and the crowd was of good behaviour.
- 16) Sgt Lunney advised the Commission that one concern with the club not being operational was that community members would travel into Nguiu to consume alcohol and that it was likely that they would drive the lengthy journey back to Wurankuwu after consuming that alcohol.
- 17) Evidence was also provided to the Commission by Mr Robert Tipungwuti, both at the Hearing and in a written submission dated 19 July 2011 stating that there are concerns within the community that without a club, the population will dwindle which may in turn "*spell the effective end of my community*". Mr Tipungwuti further stated that it is the community who wants the licence suspension to be lifted.

Consideration of the Issues

- 18) The Commission notes that whilst it appears that there have been a number of administrative oversights committed by the Licensee, specifically in relation to advising LRAS who was in fact in control and management of the licensed premises, the Commission also notes the submissions by Mr Robert Tipungwuti and Mr Blair that they have had numerous conversations with LRAS inspectors over the years, both at the premises and in Darwin and were therefore of the opinion that LRAS were fully informed of the management and leasing arrangements in place at the premises.
- 19) This in some way, can be evidenced by the fact that there have been numerous changes to the nominee of the licence over the years. However, the Commission also notes that this is not the case with the Licensee and as a result it is evident that a proper assessment of the financial stability, general reputation and character of the persons in control of the Licence has not occurred. This in turn has not allowed the Commission to turn its mind to whether the person or body corporate in control of the licensed premises is a fit and proper person to hold such a licence.
- 20) The Commission considers this to be a serious matter as is evidenced by the indefinite suspension of the licence on 8 July 2011 when it became aware of this situation.

- 21) The Commission is also required to take into account the objects of the Act in its decisions and these include the need to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor. On this note, the Commission notes the submission by Mr Tipungwuti that it is quite plausible that his community will disintegrate without licensed premises being available in his community.
- 22) The Commission also notes that since 2006, there have been no matters of complaint brought before the Commission with respect to the responsible service of alcohol to members of the community.
- 23) The Commission is also swayed by the evidence of Sgt Lunney in that there were few call-outs regarding violence and anti-social behaviour in the Wurankuwu community and on the one occasion he had seen the club operating, it seemed to be operating quite well and the crowd was of good behaviour. The Commission also noted Sgt Lunney's observations that having the club in operation may also reduce the possibility of drink driving offences or worse.

Decision

- 24) The suspension of the Licence will remain in force, unless the following sequence of events occur:
 - (a) an application for a variation of the conditions of the licence is placed before the Commission for consideration. The variations should include a request to amend the licence authority from "Club (Incorporated)" to "On Licence", to remove the standard club conditions and to vary the name of the premises given that the current premises are identified as Wurankuwu Aboriginal Corporation which has been de-registered; and
 - (b) an application for transfer of the licence to the person or body corporate that will be the entity controlling and operating the licence (including its nominee) is placed before the Commission for consideration.
- 25) Should the application for variation and application for transfer be considered favourably by the Commission, the Commission will then revoke the suspension and approve the variations and transfer of the licence.

The Commission notes that the variation of the Licence from "Club (Incorporated)" to "On Licence" will cause a change to the Licence number due to the administrative constraints within the LRAS Licence database.

- 26) The Commission has determined to waive the need to advertise the variation requests.

Richard O'Sullivan
Chairman

19 September 2011