

NORTHERN TERRITORY LICENSING COMMISSION

Application for Takeaway Liquor Licence

Applicant: Woolworths Limited

Premises: **WOOLWORTHS-CAVENAGH STREET**

Nominee: Mr Trent Pridham

Appearances: Mr A H Silvester for the Applicant
Mr I Morris for Northern Territory Commissioner of Police
Mr J Lawrence for Mr Tony O'Brien, Principal & St. Mary's Primary School
Mr M Scott for Mirambeena Resort, Darwin

Members: Ms Brenda Monaghan (presiding)
Ms Jill Huck
Mr Paul Costigan

Dates of Hearing: 23 – 27 May 2005

Decision: Takeaway Liquor Licence granted
(Paul Costigan dissenting)

Reasons For Decision

Background History

- 1) This is an application made by Woolworths for a takeaway liquor licence for its Cavenagh Street Supermarket (the Cavenagh Street Store). The proposed licensed premises are part of a shopping complex built on land

owned by the Uniting Church in Australia Property Trust (NT). The land in question is bounded by Cavenagh, Whitfield and Smith Streets.

- 2) The overall development contains a Woolworths' supermarket, together with five other retail tenancies located along the entrance/mall area to the complex. At present, the tenants of these retail tenancies include a chemist, a bakery, a hairdresser's salon and a coffee shop.
- 3) The Agreement for Lease specifies the permitted use of the overall supermarket premises as being '*supermarket and ancillary purposes, including without limitations the sale of alcoholic liquor and beverages.*'
- 4) Clause 16.1 of the Agreement for Lease also provides that Woolworths may apply for a licence to allow the sale of alcoholic liquors and beverages from the premises, and that the Uniting Church will consent to such an application.

Scope of Application

- 5) The application and evidence before the Commission confirms that the proposed licensed area is approximately 170 square metres in size. It is to be located in one corner of the Woolworths' supermarket and will be known as *Woolworths Liquor*. The proposed licensed premises will be accessible from either the retail mall directly or from within the body of the supermarket. There will be no direct or street access from the outside of the complex to the proposed licensed premises.
- 6) As regards the range of stock, the written application by Woolworths advises that the premises will "*stock a comprehensive range of product lines (of some 1600 in number) and associated products, including a dedicated ice cabinet and walk in cool room for customers. ...The premises wine range will have a premium wine emphasis and will be larger than that currently on offer at some of its other NT stores.*"

- 7) In their written application, the applicant expressly agrees to consent to conditions on its licence, if granted, prohibiting it from stocking or selling:
- i) wine in containers larger than 2 litres and
 - ii) Beer in individual glass containers larger than 375mls except for the sale of the 'Darwin Stubbies' presentation pack.
- 8) At the outset of the hearing, this condition was extended to a prohibition on the stocking or selling of fortified wines in containers larger than 750mls. (N.B. the definition 'fortified wines' was intended to mean wine with an extra addition of grape alcohol but not including wines sold as aperitifs such as vermouth.)
- 9) Finally, the licence to sell take away liquor is sought for the following times:
- i) Monday to Friday between the hours of 1000 and 2200,
 - ii) Saturdays and public holidays between the hours of 0900 and 2200 but not on Sundays, Good Friday or Christmas Day.
- 10) Following the decision of Dr Alan Clough dated 07 January 2005, the following objectors were considered to have standing to object:
- i) St Mary's Primary School Board and Mr Tony O'Brien, Principal of St Marys Primary School
 - ii) Mr Mark Payne, Assistant Commissioner Operations Command Northern Territory Police
 - iii) Mr Richard Hartshorn, Manager, Quest Darwin
 - iv) Mr Brett Simmonds, General Manager the Cavenagh
 - v) Mr Michael Scott, General Manager, Mirambeena Resort Darwin and Leisure Investments Proprietary Limited.
- 11) It is important to comment that prior to the hearing, the Commission advised Woolworths and the objectors that they accepted the applicant was a 'fit and proper person' to hold a liquor licence and that the applicant would not be required to tender evidence on this issue.

Memorandum of Understanding

- 12) The hearing commenced on Monday 23 May 2005. Mr Silvester, counsel for Woolworths, advised that prior negotiations with Police had resulted in a Memorandum of Understanding between them with respect to the Woolworths outlet in Knuckey Street (the Knuckey Street Store).
- 13) The store in question is situated on the corner of Smith Street and Knuckey Street and has for a considerable period of time supplied and sold four and five litre casks of low-priced wine to its customers. It was clear from evidence given at the hearing that certain cask wines- such as one labelled as '*Barunga Ridge*' –are widely consumed by itinerant 'problem drinkers' both within the Darwin CBD and throughout the greater Darwin area. Mr Silvester advised that in an attempt to assist the Northern Territory Police in 'cleaning up' the Darwin CBD, Woolworths had agreed to commence removing the following products from the shelves of their Knuckey Street *Max Liquor* outlet:
- i) Wines and containers greater than 2 litres,
 - ii) Beer in individual glass containers larger than 375mls (except for *Darwin Stubbies* presentation packs) and
 - iii) Fortified wines in containers larger than 750mls.
- 14) Woolworths had also agreed that '*wines in containers other than glass and fortified wines*' will only be prominently displayed as part of national promotional programmes and at all other times would be restricted to standard shelf locations.
- 15) The agreement between Woolworths and the Police with respect to the Knuckey Street Store forms the back drop to this current application for a licence at the Cavenagh Street Store and its impact on the amenity of the neighbourhood was a topic of some debate at the hearing.
- 16) In accordance with the Memorandum of Understanding reached, Mr Morris, Counsel for the NT Police, advised that whilst the Police retained their objection in name, they did not intend to actively oppose the

application for the Cavenagh St liquor licence. He later clarified that the Police would ideally wish to see the Knuckey Street variations included as licence conditions. The applicant later confirmed that they would not oppose or challenge any steps taken by the Commission in this regard.

17) There are important comments to be made regarding this private agreement between the applicant and the Police which restricts the sale of 'liquor of choice' to some customers of the Knuckey Street Store. On the basis that the private agreement with respect to the Knuckey Street Store was to be effective immediately, the Commission accept that any decision on whether or not to grant a liquor licence to the Cavenagh Street Store remains a completely separate issue-except insofar as the agreement alters the "backdrop" against which the decision is made. In short, the self imposed restrictions on the Knuckey Street Store are not contingent upon a favourable outcome with respect to this current hearing.

Impact of Memorandum of Understanding on Antisocial Behaviour

18) The Commission heard evidence from several employees holding managerial positions within Woolworths. The tenor of the applicant's evidence on this issue was that the witnesses were confident that removal of liquor of choice from Knuckey Street would improve the amenity of the neighbourhood.

19) The sole witness for the Police was Superintendent Gordon who has 24 years experience with the NT Police in various locations throughout the Territory and is currently based in the Mitchell Centre Darwin. Supt. Gordon gave clear evidence of the problems he sees with itinerant drinkers in the CBD. He explained the rationale behind Police involvement in the recent agreement with Woolworths to restrict the sale of 'liquor of choice' at their Knuckey Street Store. He himself was confident that restricting the sale of this liquor in the manner agreed would encourage itinerant problem drinkers to move from the central CBD area close to the Knuckey Street Store and to re-establish themselves near the Top End Hotel or other liquor outlets selling larger wine casks. He noted that when

the Knuckey Street Store is closed on Sundays, problem drinkers converge on the Top End Hotel for their supplies.

20)Supt. Gordon was quite candid in his acknowledgment that the agreed restrictions on the Knuckey Street Store sales will relocate rather than resolve itinerant drinking problems. Police reasons for supporting such a proposal was that improving the central CBD by removing the visible aspects of antisocial behaviour caused by itinerant drinkers will benefit local traders, the tourist industry and Darwin residents generally. He did not consider that St Marys School or the neighbourhood surrounding the Cavenagh Street store would be adversely affected by this shift in location of the public problem drinking.

21)When asked whether problem drinkers might simply switch to other products such as spirits or fortified wines rather than move their location, Supt. Gordon was of the view that this would be possible but not probable. He noted that in places like Tennant Creek, when liquor restrictions removed cask wine completely from the scene, problem drinkers moved to fortified wines and spirits. However, he was of the view that the availability of large casks of relatively cheap wine at other outlets within close proximity of the central CBD would make a change in the liquor of choice unlikely.

22)Supt. Gordon also commented on the fact that the resources available to the Police to deal with problem drinkers are much improved. At paragraph 28 of his statement dated 18 May 2005 he stated: *In my professional opinion, if both the Woolworths supermarkets in the Darwin Central business district were subject to liquor restrictions that restricted the sale of cask wine, bottled beer and cheap fortified wine, itinerants would tend to leave the CBD and move to other places where those products were available, especially when combined with the application of Police resources in such a way as to ensure that these restrictions were affective, such as by moving on itinerant drinkers.*

- 23) The main objectors to the application were St Marys Primary School and Mirambeena Resort. Both The Cavenagh and Quest Apartments simply relied upon their written letters of objection and made no oral submissions at the hearing. Mr J Lawrence, Counsel for St Marys Primary School called Mr O'Brien, the current School Principal and Mr S Parnell, Chairman of the School Board, to give evidence on behalf of the school.
- 24) The evidence before us supports a view that St Mary's School has to date had a very low rate of penetration by drinkers or itinerants and has maintained a tolerant attitude towards these problems. Incidents described by witnesses seemed to be at night and principally for sleeping purposes. There was only one incident where there seems to have been clear evidence of alcohol abuse and antisocial behaviour. This evidence is supported by Police data which shows that there have been very few recorded problems over a 3 year period. This appears to be the case despite the school's central location relatively close to a number of liquor outlets- including the Knuckey Street Store- historically the outlet of choice for itinerants within the CBD.
- 25) St Mary's is currently surrounded by fences of various heights and it has not been considered necessary by either the Principal or the Board to upgrade. The existing level of intrusion and potential for exposure by young students and teachers to antisocial behaviour appears to be something that the school has been willing to tolerate. Their concern of course is to ensure that the existing problems are not exacerbated by the proposed liquor licence being granted.
- 26) It is clear that the principal, Mr O'Brien, the Chairman of the Board and the majority of the School Council are strenuously opposed to the proposed liquor licence and have maintained their opposition throughout the current and previous attempts made by Woolworths to obtain a liquor licence for these premises. Whilst the Commission fully acknowledge that it is up to the Board to make decisions on the part of the parent body in response to applications such as this, it would have been helpful to have clear

evidence of the level of opposition or concern felt by the St Mary's' parent body. This is especially so when faced with survey evidence from Dr Henstridge which suggests that at least 60% of parents of children at "an inner city school" favour the liquor licence as proposed.

27) Mr Parnell, Chairman of the School Board, also gave evidence in his capacity as a serving Police Officer. His past experience included six years as Officer In Charge of Darwin Central Police Station and he expressed concern that the anticipated outcome of the Knuckey Street store restrictions may not happen. Instead, problem drinking itinerants who normally reside within the central CBD may simply change their "liquor of choice" to other available products and elect to remain within the central CBD. Further, there being no clear difference between the range of products which will be sold in the future at the Knuckey Street store and the proposed Cavenagh Street store, itinerants might well gravitate towards the environs of the Cavenagh Street store and use it as their liquor supplier.

28) Sgt. Parnell was concerned that the parks and open spaces in and around St Mary's School could become attractive places for itinerants to congregate thus adversely affecting the amenity of the neighbourhood. Finally, if the Knuckey Street Store restrictions work as anticipated and the problem drinkers move to the area surrounding the Top End Hotel, Sgt. Parnell's concern is that the school will be affected when they move back and forth between the Top End Hotel and town.

29) The evidence also supported a finding that Mirambeena has some problems with itinerants and drunks which are in the main associated with people taking a short cut through the grounds or visiting guests staying at the premises. Like St Mary's, problems caused to date by itinerant drinkers have not been of major concern.

30) In considering the evidence as regards the likely impact of the proposed restrictions on the amenity of the neighbourhood, the majority of the

Commission have reached the following conclusions. It is clear that the Darwin CBD has a problem with alcohol related behaviour which may or may not be worse than other capital cities. Some of this behaviour is likely to be associated with consumption at on-licence premises and some with takeaway alcohol. Alcohol related itinerant problems are largely associated with takeaway alcohol.

31) We accept on the evidence that, in recent history, itinerant drinkers in the city have tended to buy their alcohol from the Knuckey Street Store. Itinerants do not generally use Liquorland in the Mitchell Centre or Vintage Cellars in Cavenagh Street.

32) It appears likely that a number of factors determine whether or not itinerant drinkers will favour a certain outlet. These factors include product range, venue presentation, marketing (including signage and product display), the distance of the liquor shop from the street entrance, staff characteristics, the presence of security and the presence of car parks. Liquorland, for example, has some restrictions on product range (no 4 litre casks), an upmarket presentation, some distance from the public entrance, security presence and no external liquor signage. However it also has 2 litre casks of wine and port which are on shelves near internal and external egresses, an underground carpark area and is opposite parkland. It does not appear to have a problem with itinerant drinkers.

33) Vintage Cellars has an upmarket bottled wine focus in its presentation and range, well presented fixtures and fittings and experienced staff. It has a discreet private carpark and no open parkland adjacent. It is notable however that this outlet has no restrictions on product range, external signage, a wide street frontage and no security. 4 litre casks are sold but are displayed more discreetly at the back of the shop and are slightly more expensive than the more popular brands favoured by itinerant drinkers and sold at the Knuckey Street Store and some other outlets. This store does not appear to have a problem with itinerant drinkers.

- 34) Thus, we have evidence before us of some takeaway outlets within the CBD that have been able to trade without attracting the custom of itinerant drinkers and the related problems that their presence creates for the neighbourhood.
- 35) It was argued by Mr Scott and to some extent by Mr Parnell that the liquor restrictions agreed to by the Knuckey Street Store and proposed for the Cavenagh Street store will not work and the concern is that itinerant drinkers may elect to change their "liquor of choice" to 2 litre wine casks. Mr Scott also showed that it is possible to get 2 litre casks "on special" at a competitive price per volume. We have considered carefully this possible scenario but ultimately, we are not persuaded that this shift to 2 litre wine casks is likely to occur.
- 36) The Alice Springs Liquor Restrictions showed a shift from 4 litre wine casks to 2 litre port but did not show a shift to 2 litre wine casks. Further, the Alice Springs restrictions involved area-wide uniform restrictions which meant that no 4 litre wine casks at all were available for purchase. This forced a change on itinerant drinkers that is not faced by itinerant drinkers in the Darwin CBD. Their liquor of choice will still be available from other outlets within a 10 to 15 minute walk from the CBD.
- 37) Further, we have evidence before us of the likely impact of restrictions in product range each Sunday when the Knuckey Street store is unable to sell alcohol and itinerant drinkers are known to leave the CBD area and move to the vicinity of the Top End Hotel where they can get their supplies.
- 38) We accept on the evidence before us the likelihood that the Knuckey Street store restrictions will cause a move away from the CBD towards the Top End Hotel and other liquor outlets selling 4 litre casks of the preferred brands of wine such as Barunga Ridge. In reaching this conclusion, we have considered the evidence of both Supt. Gordon and Sgt. Parnell. We accept that Sgt Parnell was in the invidious position of having to argue a

case contrary to that of his superior and note that his personal view was based upon his past experience in the CBD and his need to protect the school's interests both as Chairman of the Board and as a parent whose children attend the school. However, we ultimately prefer the evidence of Supt Gordon who gave candid, well informed reasons for his conclusions and did not appear to be overstating in any way the realities of having the "liquor of choice" removed from the central CBD to other locations. No convincing evidence was provided to support concerns that a move of itinerant drinkers from the central CBD to other outlets on the fringe of the CBD would cause an adverse impact upon St Mary's, Mirambeena and their neighbours.

39) We are also not persuaded on the balance of probabilities that a change in the liquor of choice is likely to happen so as to enable the problem drinkers to remain in the CBD close to their liquor outlet. If such a change did occur, then we consider we would see a shift in drinking to less harmful types of liquor such as beer, as sale of port in 2 litre casks is prohibited and we are not persuaded by arguments that wine in 2 litre casks will become a problem.

Impact of Proposed Cavenagh St Store Licence on Amenity of Neighbourhood.

40) After considering all of the evidence raised by the objectors, we are not persuaded that the likely move of problem drinkers to areas outside the central CBD will cause any increase in the level of "itinerant problems" currently experienced in the neighbourhood of the Cavenagh Street Store including the Mirambeena and St Mary's School. The question still remains however, whether the granting of the proposed liquor licence in these circumstances will adversely affect the amenity of the neighbourhood.

41) There was no convincing claim made in oral evidence that a Cavenagh Street licence would increase itinerant drinking problems. It was noted that Mirambeena has its own takeaway licence and can sell alcohol to

bona fide residents (as there are no bar fridges in their rooms) or Darwin Stubbies to the general public. Evidence was given by Mr Scott that takeaway liquor is sold at bar prices and was only a small part of the overall liquor turnover of the business. Further, Mr Scott gave evidence that he was not concerned that sales at Cavenagh St would affect his own takeaway sales but that his principal motivation as an objector was to highlight antisocial behaviour issues.

42) It is notable that there are no fast food outlets in the immediate area of the Cavenagh Street Store other than a fairly upmarket café in the foyer. Whilst the carpark is not currently attracting itinerants, police evidence is that all carparks in the city experience some use by itinerants although not necessarily associated with alcohol abuse issues.

Considering the Application Itself.

43) Against this background, the next question is whether we should grant the liquor licence sought. The members of the Commission have considered in some detail the documentary and oral evidence tendered, the competing interests of the applicant and objectors and the various Objects of the Act that must ultimately guide us in our decision-making.

44) In reaching a decision, we have not ignored the question of whether there is a need for a further liquor outlet in the central CBD. Whilst the question of “need” is not definitive, the needs and wishes of the public are clearly relevant to our decision-making. Assessing the question of need, however, was not easy. The Commission would have appreciated having evidence and research tendered that clearly addressed such issues as the impact of a “controlled” takeaway liquor outlet on wider community health and social issues. We would have also appreciated some guidance from published research and expert evidence in answering the question –“When is enough, enough?” It appears, however, that persuasive research relevant to the NT is not readily available on these issues. Apart from various personal views expressed by witnesses as to the need or not for a further takeaway licence in the CBD, the Alcohol Framework Policy Paper and

some general research papers from interstate and overseas dealing in part with these issues, there was little evidence to guide us. Ultimately, Commissioner Costigan felt strongly that the applicant failed to satisfy him that there was a need for a further liquor outlet and he did not support the granting of the licence.

45) Whilst there are clearly a number of alternative takeaway liquor outlets available to the public, the majority of the Commission placed some weight on the survey results which gave general community support for a granting of the licence. They also noted the reality that some 23,000 shopping transactions take place at the Cavenagh St Store each week and the convenience of those shoppers in making alcohol purchases with their groceries is relevant.

46) The majority of the Commission was ultimately satisfied on the balance of probabilities that there was community support for a controlled takeaway licence as proposed and that granting the same would not impact adversely on the amenity of the neighbourhood. In making this decision, the majority were principally concerned with ensuring that the neighbourhood was not adversely affected and that any harm was minimised than they were with ensuring a diversity of liquor outlets. Whilst the issue of diversity is an important one for numerous reasons, the reality of this application was that protecting the amenity of the neighbourhood was the focus of attention for the Commission and for the parties.

47) It is the view of the majority of the Commission that a licence for an “upmarket” liquor store similar in style to Liquorland in the Mitchell St Centre and with specific conditions to minimise harm and protect the amenity of the neighbourhood should be granted. In making this decision, the majority have taken special account of the following:

- (1) The need to structure the licence conditions to ensure the premises are not attractive to problem drinkers by placing limits on cheap, bulk wine with high alcohol content, long neck beers and fortified wines.

- (2) The need to place limits on external signage to reduce the visibility of the liquor outlet from the carpark and roads.
- (3) The importance of well trained, well resourced staff with responsible service of alcohol training and manuals designed for the Northern Territory.
- (4) The importance of an appropriate security presence at, and around, the licensed premises as is utilised in other Woolworth's outlets in Greater Darwin.
- (5) The importance of including in the Licence a clear "concept" provision to ensure that the premises remain an up-market liquor outlet catering for a responsible drinking sector of the market and placing restrictions on the marketing of bulk item products
- (6) The Commission notes with approval the expressed willingness of Woolworths to continue to work with Police and, if interested, other stakeholders to maintain/improve the amenity of the neighbourhood.

IN SUMMARY:

A liquor licence is granted to the Applicant to sell liquor for consumption away from the premises to be known as WOOLWORTHS LIQUOR-CAVENAGH STREET with the following special conditions:

1. The Licensed hours shall be :
 - 1.1. Monday to Friday between 10:00 and 22:00;
 - 1.2. Saturday and public holidays between 9:00 and 22:00;and
 - 1.3. No trading on Sunday, Good Friday or Christmas Day.
2. The sale of
 - 2.1. wine in containers greater than 2 Litres;
 - 2.2. beer in individual glass containers larger than 375 ml (except for "Darwin Stubby" presentation packs);
 - 2.3. fortified wines in containers larger than 750 ml is prohibited.

"Fortified Wines" means wines made with an extra addition of grape alcohol but does not include wines sold as aperitifs, e.g. Vermouth.)
3. That
 - 3.1. wines in containers other than glass; and
 - 3.2. fortified wines;

may only be prominently displayed as part of a national promotional programme and at all other times will be restricted to standard shelf locations and not featured, advertised or otherwise promoted differently to other stock.

That the licensee must provide notice in writing to the Commission of any national promotional programme (in respect of products referred to in clause 2 hereof) at least seven days before the commencement of the promotion.

4. The Licensee shall operate the licensed premises at all times consistently with the concept and detail of the licence application as presented to the Commission, or as otherwise subsequently approved in writing by the Commission.

It is part of the concept of this licence that:

- 4.1. the premises in both fixtures and fittings will have the appearance of an “upmarket” or “quality” liquor store and shall be operated to standards consistent with this concept;
 - 4.2. the premises will stock a comprehensive range of product lines; and
 - 4.3. The wine range of the premises will have a premium wine emphasis.
5. Should the Licensed premises, or the operation of the licence be considered by the Commission, a Licensing Inspector or Police Officers to be inconsistent with such concept, the Commission may of its own motion convene a hearing into the operation of the premises and, at the conclusion of the Hearing, may suspend, cancel or vary the licence if the Licensee in the opinion of the Commission shall have failed to show sufficient cause to the contrary.
 6. The Licensee will not seek any variation of the abovementioned proposed restrictions save and except if, at any time from the date of the imposition of the restrictions, either:-
 - 6.1. a new or further licence for the sale of liquor for consumption away from the licensed premises is granted to any person in respect of premises in the Darwin CBD (defined for the purposes of this condition as that area surrounded by the Esplanade extending to Harry Chan Arcade, then along McMinn St from the corner of McMinn St and Bennett St to Daly St, then along Daly St back to the Esplanade) which new or further licence did not include the restrictions referred to in clauses 1 to 4 above;
 - 6.2. similar or partially similar restrictions in force as at the date hereof on the licences of other licensees operating in the CBD are in any way changed so as to be revoked, removed or lifted, either wholly or partially.
 7. The Licensee or its nominee or other designated representative shall actively participate in any forum convened by the NT Police or the NT Licensing Commission for the betterment of the neighbourhood surrounding the Cavenagh Street Store.

8. The Licensee shall ensure that no external signage, advertising or promotional material or hoarding with respect to liquor is visible from the car-park, adjacent streets or surrounding neighbourhood of the Cavenagh Street Store. Further, the only signage to be visible from within the Mall area shall be the name "Woolworths Liquor" above the Mall entrance to the licensed premises.
9. The Licensee shall provide a responsible and appropriate level of security both within and around the Cavenagh Street Store to assist in ensuring that the amenity of the neighbourhood is maintained.
10. Liquor tasting is permitted at any time provided seven days prior notice is given to the Director.

Brenda Monaghan
(Presiding Member)
30 June 2005