

NORTHERN TERRITORY LICENSING COMMISSION
APPLICATION FOR TRANSFER OF LICENCE
DECISION

APPLICANT: MR CALVER WILSON

LICENCE: BANYAN TREE CARAVAN & TOURIST PARK

LICENCE NUMBER: 81115510

COMMISSIONERS: Mr Richard O'Sullivan (Chairman)
Mr Philip Timney (Legal Member)
Mrs Jane Large (Member)

DATE OF HEARING: 11 February 2009

BACKGROUND

- 1) On the 3 February 2009 an application was submitted by Mr Calver Wilson seeking approval to transfer the liquor licence of the Banyan Tree Caravan & Tourist Park from Mr Harald Willms. The arrangement initially is for Mr Wilson to lease the premises for 12 months commencing 1 March 2009, with the likelihood following this 12 month (trial) period, that the business will be sold to Mr Wilson.
- 2) The necessary documentation to facilitate the transfer has been supplied by Mr Wilson. Mr Wilson does not intend making any significant changes to the business while he is Licensee and Nominee and moreover he has advised Inspectors that he is happy to operate the business in accordance with the Licence Conditions which provide for restricted takeaway sales.
- 3) The material before the Commission indicates that Mr Wilson has sufficient financial resources, managerial capacity and is on good character qualifying him as a person suitable to hold a Liquor Licence. Mr Wilson has also successfully completed the Liquor Act exam and holds a Responsible Service of Alcohol Certificate.
- 4) The previous licence contained unique condition relating to the takeaway sales. These conditions are:

Takeaway Sales Are Restricted As Follows:

(A)

(a) *Beer only to be sold in cans not bottles.*

(b) The maximum amount of beer to be sold per day is limited as follows:

Either

(i) one (1) carton per day per person for sales to guests of the Banyan Tree and local residents ("Local Residents"). Local residents are defined as persons who reside along Windmill Road within 3 km either side of the Banyan Tree; or

(ii) One (1) carton per Vehicle to other members of the public excluding Local Residents and guests of the Banyan Tree. A Vehicle is defined as a vehicle in which the alcohol will be transported from the Banyan Tree provided that any boat, caravan or other towed vehicle is not considered to be a separate vehicle for the purposes of this provision.

(c) The Licensee must retain a register of all takeaway sales of beer, which clearly shows the following:

(i) For sales to guests of the Banyan Tree and Local Residents, the purchaser's name and address at the time of sale, the date of sale and the amount of beer sold in each purchase; or

(ii) For sales to general members of the public excluding guests of the Banyan Tree and Local Residents, the registration number of the Vehicle, the date of sale and the amount of beer sold in each purchase.

(B) There shall be no external signage on the roadside, within the car park or on external walls of the premises advertising the sale of liquor at the Banyan Tree.

(C) The variation of the liquor licence to allow the sale of takeaway beer to the public is based upon the stated concept proposed by the Licensee Harald Willms for a modest and discreet takeaway service to be utilised principally by guests and close neighbours of the Banyan Tree and to remain ancillary to the principle business of a Caravan Tourist Park.

(D) The Licensee is granted to Harald Willms and is not transferable.

(E) *The licensed hours for takeaway beer are varied as follows:*

- a. *9:00am to 7:30pm on Saturdays and Public Holidays*
- b. *10:00am to 7:30pm from Monday to Friday*
- c. *No trading on Christmas Day, Good Friday and every Sunday.*

- 5) These conditions were imposed by the Commission as an outcome of hearings conducted 29 & 30 March 2004 and the 28 June 2005. It is evident in these hearing decisions that the Commission had concerns over extending takeaway sales and therefore the limited licence eventually granted for takeaway only provided for sales of beer, to be limited to one carton per person per day, or one carton per vehicle per day. Condition D provides that the licence granted is "not transferable". No reason is given for imposing such a restriction on the licence.
- 6) Inspector Bell had provided advice to the Commissioners that the full assessment of Mr Wilson's fit and properness, financial standing and general probity had all indicated that there were no reasons not to approve the transfer. Mr Wilson had additionally often worked at the business and was familiar with its operations and client base. He is an immediate neighbour of the licensed premises.
- 7) To a degree and to bring into account the suitability of the applicant to hold a licence, the Commission considered that it would be unfair not to transfer the licence. This gives rise to the need to review the no transfer condition in the licence. It is an unusual condition and as there were no previous documented reasons given for imposing this condition the Commission was inclined to revoke it.

DECISION

- 8) The Commission has determined to grant the transfer for the 12 month period sought, but notes in doing this it is in effect undoing the former restriction that the licence is not transferable. The Commission carefully considered aspects of this transfer issue and associated issue on restraint on trade and has determined to lift that condition from the new licence granted to Mr Calver Wilson. All other Conditions on the licence stand.

Richard O'Sullivan
CHAIRMAN

17 February 2009