

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>PREMISES:</b>	<b>TIMBER CREEK WAYSIDE INN</b>
<b>LICENSEE:</b>	Timber Creek Hotel Wayside Inn Joint Venture Pty Ltd
<b>LICENCE NUMBER:</b>	81201198
<b>COMPLAINTS:</b>	Cancellation of Liquor Licence Pursuant to Section 72(5)(a) of the <i>Liquor Act</i>
<b>HEARD BEFORE:</b>	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Wally Grimshaw
<b>DATES OF HEARING:</b>	12 May 2010 and 7 September 2010
<b>APPEARANCES:</b>	Mr Graeme Buckley of Cridlandsmb, Counsel for NWA Nominees Inspector Mark Wood for the Director of Licensing

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### BACKGROUND

- 1) The Timber Creek Wayside Inn ("the Inn") is situated at lot 13 Victoria Highway in Timber Creek and, at present, includes a mostly demolished Inn, operating general store, caravan park and accommodation units. The building works at the Inn were the subject of previous reports from Licensing Inspectors in respect of the failure of the Licensee to obtain approval for material alterations prior to the commencement of the demolition and refurbishment of the licensed premises.
- 2) In 1999 the Indigenous Land Corporation transferred the title for the property on which the Inn is located to Gunamu Aboriginal Corporation ("GAC"). Also in 1999, a 10 year joint venture arrangement was entered into between the owners of the near by Timber Creek Hotel, the Directors of GAC and an indigenous business named NWA Nominees (Timber Creek) Pty Ltd, ("NWA Nominees") whose sole shareholder is the Ngaliwurru-Wuli Association ("NW Association"). The liquor licence for the Inn was issued to Timber Creek Hotel Wayside Inn Joint Venture Pty Ltd.
- 3) On 30 June 2009 the joint venture agreement ceased. In a report dated 29 January 2010 to the Commission, the Director of Licensing advised of a number of outstanding issues in respect of the operation of the Inn. Namely, the failure of the dissolved previous Licensee to transfer the liquor licence to another corporation or entity, the failure to submit final plans for the proposed redevelopment of the licensed premises and the failure to take any action in

respect of the gaming machine licence attached to the licensed premises. The report noted that these matters remained outstanding despite significant attempts over a lengthy period of time, on the part of both Licensing Inspectors and Counsel for the Licensee, to have those matters resolved.

- 4) Annexed to the report was a letter dated 27 January 2010 from Mr Ryan Beers of Cridlandsmb, Counsel for NWA Nominees. Mr Beers advised that his client proposed to transfer of the liquor licence from Vic River Pty Ltd to NWA Nominees Pty Ltd. (The Commission notes that the reference to Vic River Pty Ltd is somewhat misleading as that Corporation, the current Licensee of the Timber Creek Hotel, has never been recorded as Licensee of the Timber Creek Wayside Inn. Mr Clive Stone and Ms Rachel Stone were the Nominees when the joint venture entity held the liquor licence and are now the Nominees for Vic River Pty Ltd. Whilst Mr and Ms Stone may have been required to execute a transfer document they would not have done so on behalf of Vic River Pty Ltd but rather in their capacity as formers Directors of the joint venture entity). Mr Beers' correspondence advised further that the material alteration of the licensed premises would not be completed prior to June 2011 and that, following the transfer of the Licence to NWA Nominees, an application would be made to suspend the licence pending the completion of the works on the premises.
- 5) The Director's report referred to above was considered by the Commission at its meeting held on 3 February 2010. The Commission determined to suspend the Liquor Licence pursuant to Section 66(1)(c) of the *Liquor Act* and to suspend the Gaming Machine Licence pursuant to Section 48(b) of the *Gaming Machine Act* pending resolution of the outstanding issues. The Commission also determined to conduct a Hearing to consider cancellation of the Liquor Licence pursuant to Section 72(5)(a) of the *Liquor Act* on the basis of uncertainty as to who was the Licensee and the fact that the premises had not been used for the sale or supply of liquor for a period of in excess of 90 days.

## THE HEARING

- 6) On 12 May 2010 a Hearing was commenced before the Commission into the cancellation of Liquor Licence 81201198 for the Inn pursuant to Section 72(5)(a) of the *Liquor Act*.
- 7) Mr Buckley of Cridlandsmb, appearing as legal representative of NWA Nominees, advised the Commission that he was seeking an adjournment of the Hearing in order to allow further time for his client to deal with the transfer of the licence and the other outstanding matters referred to in the Director's report. He confirmed that the premises had not traded under the liquor licence for some time and that the joint venture entity had been dissolved some 12 months previously. Mr Buckley submitted a document titled "Wayside Inn Precinct – Timber Creek" detailing the background to the operation and ownership of the premises during the previous 10 years.
- 8) Mr Buckley advised that he was seeking an indefinite adjournment, for a period of up to 12 months, to allow sufficient time for the Licensee to get its affairs in order. He noted that his client had engaged the services of a consultant, Mr Michael McIlwee, to assist in that regard. Mr Buckley informed

the Commission that Mr McIlwee expected to have a report prepared on a way forward within 3 months and that his client was prepared to provide interim reports on progress at 3 monthly intervals.

- 9) Mr Buckley noted that the Gaming Machine Licence was currently suspended by dint of the suspension of the Liquor Licence.
- 10) Mr Wood, on behalf of the Director of Licensing, consented to the grant of a short adjournment but objected to the proposed period of 12 months. He advised the Commission that his discussions and negotiations with the Licensee had commenced in 2008 and that the Licensee had not been proactive in addressing any of the matters raised in the Director's report. He also noted that there had been no Licensee since the dissolution of the joint venture entity and submitted that that situation should not be allowed to continue for a prolonged period.
- 11) Mr Wood noted that the report from Mr McIlwee was expected to be finalised within 3 months and submitted that a 3 month adjournment of the Hearing was reasonable and appropriate considering the past tardiness of the Licensee in dealing with the ownership and the operation of the business under the licence.
- 12) The Commission determined to adjourn the Hearing for a period of 3 months to allow the Licensee to consult with and obtain a report from Mr McIlwee. The Chairman advised the parties that the Hearing would resume on a date prior to 10 September 2010. The parties were granted liberty to apply and invited to provide any additional information or advice in respect of the progress of the matter, and in particular the transfer of the licence, in the interim.
- 13) On 25 June 2010 Mr Buckley advised that the transfer of licence documents had been signed on behalf of the joint venture partner by Mr Clive Stone and would be submitted to the Director for consideration.
- 14) The Commission was subsequently informed that on 22 July 2010 the Director had received a facsimile under the hand of Mr Stan Retchford on behalf of NW Association, stating that the Board '*...has unanimously voted and have agreed not to continue with this transfer, in the light of current community expectations and future direction of community planning*'.
- 15) Inquiries made to Mr Buckley on behalf of the Director revealed that he was unaware of the facsimile.
- 16) The Hearing in respect of the cancellation of the Liquor Licence of the Timber Creek Wayside Inn resumed at 9.30 on 7 September 2010. Mr Buckley and Mr Wood were in attendance.
- 17) Mr Buckley informed the Commission that he was appearing as a matter of courtesy to the Commission and that he was without instructions from his client. He advised further that, on the basis of the lack of instructions, he was unable to assist the Commission in respect of the application for cancellation of the Liquor Licence. Mr Buckley sought, and was granted, leave to withdraw from the Hearing.

- 18) Mr Wood confirmed that the transfer of the liquor licence was not the only outstanding issue and the problems with the unauthorised material alterations remained unresolved. He advised that a recent inspection of the premises revealed that it still had the appearance of a construction site.
- 19) Mr Wood drew particular attention to the letter from Mr Retchford of 22 July 2010 advising that the NW Association Board had determined not to proceed with the transfer of the licence. He confirmed Mr Retchford is the President of the NW Association and that he had received no further correspondence indicating any other arrangement or proposal in respect of the transfer of the licence from the now dissolved joint venture entity.
- 20) Mr Wood advised that he had spoken to Mr McIlwee and that he is no longer interested in the premises in any capacity. He stated that Mr McIlwee had lost interest due to the "shambles in governance" of NWA and because he was unable to obtain instructions in respect of the consultant's report he had been engaged to prepare.

## DECISION

- 21) The Commission currently has before it an application from the Director of Licensing that the Liquor Licence for the Timber Creek Wayside Inn be cancelled. Relevant to that application, Section 72 of the Liquor Act provides:

### **72 Cancellation of licence**

*(1) The Commission, after conducting a hearing, may, by order, cancel a licence where:*

*(5) In addition to subsection (1), and notwithstanding anything in this Act which may be construed as qualifying or limiting the power of the Commission to cancel a licence, the Commission, after conducting a hearing, may, by order, cancel a licence where it is satisfied that:*

*(a) licensed premises in respect of which the licence was granted have not been used for the sale or supply of liquor for a period of 90 days;*

- 22) The Licensee shown on the current Liquor Licence, Timber Creek Hotel Wayside Inn Joint Venture Pty Ltd, was dissolved on 30 June 2009. The premises have not been used for the sale or supply of alcohol since that time. Nor have the owners of the land on which the licensed premises are situated taken any steps indicating that a transfer of the licence is likely to be effected within any reasonable time in the future, if at all. The Commission notes in particular the advice from Mr Retchford that the NW Association Board has unanimously agreed not to proceed with the transfer of the licence.
- 23) The Commission is satisfied, in terms of Section 72(5)(a) of the Act, that the premises have not been used for the sale or supply of alcohol for a period well in excess of 90 days. The Commission is also satisfied that the former Licensee and/or the owner of the premises has had more than sufficient time and opportunity to address the situation, including during the conduct of the within Hearing, and has failed to do so.

- 24) The Commission also notes that Mr Buckley, counsel for NWA Nominees, had been unable to obtain instructions from his client and, as a consequence, was unable to make submissions opposing the application for cancellation or in respect of any proposal for the future conduct of business under the Liquor Licence.
- 25) For the above reasons, the Commission has determined, pursuant to Section 72(5)(a) of the *Liquor Act*, to cancel Liquor Licence Number 81201198 in respect of the Timber Creek Wayside Inn, effective from the date of the conclusion of the Hearing, being 7 September 2010.
- 26) Section 48 of the *Gaming Machine Act* provides as follows:

***48 Cancellation or suspension of gaming machine licences in certain circumstances***

*If the liquor licence for premises licensed under this Act is:*

*(a) cancelled, transferred or surrendered, the gaming machine licence for the premises is cancelled;*

- 27) As a result of the cancellation of the Liquor Licence for the Timber Creek Wayside Inn the Gaming Machine Licence attached to the premises is also cancelled, effective from 7 September 2010.

Richard O'Sullivan  
CHAIRMAN

27 September 2010