

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

Applicant: WAYEGO PTY LTD

Premises: MOULDEN SUPERMARKET

Heard by: Mr John Withnall (presiding)
Ms Mary Ridsdale
Ms Shirley McKerrow

Date of Hearing: 1st March 2000

Appearances: Mr Ian Burnell , managing director of the applicant

The following reasons for decision were delivered ex tempore by the presiding member on 3rd March 2000, to Mr Ian Burnell of the applicant company; some editing has taken place, and the formal orders drawn up:

I will record the resumption of the application by Moulden Supermarket for a variation in licence conditions. I should note at the outset that even though Mrs McKerrow is not with us this morning she fully participated in this decision, she has acquiesced in it, and what we are handing down is therefore a decision of the full hearing panel of three, and not just of the two of us here present. (*Addressing Mr Burnell*): I should also indicate at the outset that it is a decision in relation to which you will probably have mixed feelings. We will be able to give you a written version of this decision fairly soon; it has just not been possible to have written reasons ready at this time, but we realise that you are anxious to know where you stand in relation to the application.

We have received formal advice that neither the proprietor of the Palmerston Tavern nor the AHA-NT will be appearing to pursue their written objections, and we note for the record that none of the other objectors has chosen to appear at the hearing. In a recent hearing (*Humpty Doo Tavern*) the Commission had this to say in relation to the standing

of written objections which are neither withdrawn nor pursued by the appearance of the objectors at the hearing:

We do not believe that in this situation the objection should be dealt with in any way analogous to being struck out. It should be assumed that the views of the objector continue to be held by the objector, and that that the objector remains opposed to the application. The written objection remains on foot, and remains a hurdle for the applicant, albeit an increasingly lesser one as the hearing progresses and the evidence of the applicant, especially in relation to the specific objection, is uncontested by or on behalf of the objector.

What we have been considering, and what we are making a decision on, is your original application; that is, your application that we approve the necessary changes to your existing licence to enable you to operate a drive-through bottle shop on the existing licence, albeit only now for six days a week because of recent changes to government regulations. We reiterate that which we mentioned at the beginning of the hearing, that your later amendments to your application have not been dealt with; they were unable to be dealt with because they had not been notified to any of the objectors, such that those objectors who did not turn up at the hearing and those objectors who formally withdrew their objections were unaware of your new positions. So what we have dealt with is your original application, as you advised us you wished to proceed with that as a “fallback” position with the application, and I might say that the limiting of our consideration in that way does have consequences for you in terms of the options that will still be open to you. I will come back to that later in these reasons.

Your application is for approval under section 119 of the *Liquor Act* for material alterations to the licensed premises, and while we have no objections to the changes to your storage and display areas as you set out in Exhibit 1, the map you did for us, there is one critical exception to our approval and that is the direct external access from the outside to the new liquor area; we do not approve the proposed new public access. Our approval of the other changes is subject to that caveat. Approval only goes as far as and does not include the direct external access from the outside.

The terms of your current licence are such as to constitute what is often referred to as a Store Licence, or Store Authority, and that is the basis on which your particular licence

came into existence, that the sale of liquor is to be ancillary to the sale of what the licence refers to as groceries. In our view that means ancillary in two different ways: ancillary in terms of share of gross turnover, a historically well understood concept, but also ancillary in terms of the shopping environment, the look and feel of the shop and the way it operates. This type of licence is a liquor facility for people shopping in a store the main business of which is the sale of products other than liquor. That is the core concept of this type of licence.

The changes you seek to the display and storage areas are such that you finish up with quite a large area for liquor, something like (in rough terms) a third of the floor area of the store. That alone may tend to dominate the look of the shop inside, and did cause us some concern, but nevertheless the Commission has decided that its approval should at least go that far. The reasoning behind our refusal to approve direct access to the new liquor area other than through the store is basically that it would create a facility considered inappropriate to this type of licence: it would tend to change the very character of the store and the way the store does business. You did raise with us the example of the Sabine Road Supermarket at Millner, and indeed that outlet does operate in the manner you would wish for yourself. However, that particular approval was given in the early eighties for reasons which at this remove in time can only be taken to have been pertinent to that site back at that time. Community needs and wishes do change over time and no one liquor outlet can expect to serve as any ongoing precedent for all time for all who come after it.

The Commission's perception of the responsible regulation of the sale of liquor may change over a given period of time, as well may its perception of proper regard for appropriate principals of harm minimisation. Our present view is that the effect of what you have proposed with the significant enlargement of the liquor area *and* the direct access from the car park or from a driveway would be the promotion of alcohol-only shopping at a general store, the encouragement and facilitation of the non-ancillary purchasing of alcohol under a licence the core concept of which is that the alcohol sales must remain ancillary, a term that has reference not just to turnover but also to the very way the business of the store is conducted.

Where this leaves you is that you cannot open up an access door direct to the liquor area from the outside of the store, but you can make all the other changes shown in Exhibit 1.

During further submission from you in relation to the foregoing decision you have explained that the door that we have declined to approve will be the only access for deliveries to the new coolroom. In that circumstance we clarify our concern as being that such a door shall not be available for *public* access for customers of the new liquor area. We are prepared to include the actual construction of the door in our approval, provided that a new condition is inserted in your licence prohibiting any *trading* by way of the new door.

The formal orders the Commission makes in relation to the application are therefore as follows:

- (1) The material alterations to the licensed premises shown in Exhibit 1 are approved pursuant to sec. 119(5)(a) of the Liquor Act , and the designated liquor storage and display areas shall be as shown on that plan;
- (2) Pursuant to sec 49(4)(a) of the Act, the conditions of Licence No 80904159 will be amended by the insertion in the written licence of a new special condition in the following terms:

The licensee shall not permit patronage of the designated liquor storage and display areas other than by way of access to those areas only from the general (non-liquor) sales area of the store; the licensee shall not trade in liquor by way of any door giving access to the designated areas direct from any area outside the licensed premises, and shall not sell or supply any liquor product to any person who shall have gained admittance to the liquor facilities other than by entry to or from the general store area.

- (3) Pursuant to sec. 104(3)(g) of the Liquor Act, all persons are authorised by the Commission to enter those parts of the licensed premises not comprising the designated storage and display areas at all times when the store shall be open for business outside its permitted liquor trading hours.

I said at the beginning of these reasons that we have only dealt with your original application, and so this decision in no way affects your options to now formally apply for a new and different type of licence if you so wish. You are still free to apply for a stand-alone bottleshop licence that does not hang off the business of the store and does not hang off or is any way dependant on the store licence. You would do that by filling in the appropriate forms and lodging appropriate supporting documentation at the administrative offices of the Commission. The Commission's advice as to the remaining availability of such a process to you should not be taken as any indication of the prospects of success for such an application. It would go through a public advertising process, would be likely to attract a significant level of public objection, and should finish up here for a hearing in a somewhat shorter time than this last one has taken to be brought on. We can in no way pre-empt the decision of the Commission at that future hearing.

This present matter is now concluded.

John Withnall
(Presiding Member)
3 March 2000