

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Banyan Tree Caravan Park and Store
Licensee:	Harald Willms
Licence Number:	8115510
Application:	Variation of Liquor Licence Conditions to Allow for Liquor to be Sold for Consumption Away from the Premises
Objectors:	Assistant Commissioner Mark L Payne, Operations Command Mr Steven Robertson, local resident and tourist operator
Relevant Legislation:	Sections 3, 6, 32A of the <i>Liquor Act</i>
Members:	Brenda Monaghan (presiding) Jill Huck Paul Costigan
Date of Decision:	28 June 2005

1. The application before us is for the variation of the liquor licence conditions of the Banyan Tree Caravan Park and Store to allow for liquor to be sold for consumption away from the premises. Mr Willms, licensee, had made an earlier application in 2004 to extend the takeaway licence for The Banyan Tree but was unsuccessful. This current application was lodged by him on 11 January 2005 and the advertisement notifying the public of the application appeared on 2 and 4 February 2005. The advertisement sought a full takeaway licence for sale of liquor to the public from Monday to Friday 10am to 10pm, Saturday and Public Holidays from 9am to 10pm and no trading on Sundays, Good Friday and Christmas Day.
2. Two objections were received in response to the advertisement-one from the Northern Territory Police and one from Mr Steven Robertson who at that time was a land owner and tour operator in the neighbourhood of the Banyan Tree. Mr Robertson has since sold his interest in the premises in question but remains entitled to appear as an objector with respect to this application.
3. The hearing of the application commenced on Tuesday 31 May 2005 and was further adjourned to Monday 6 June 2005 to provide the parties with an opportunity to make final submissions. Assistant Commissioner Payne of the Northern Territory Police took the opportunity on 6 June 2005 to submit both written and oral submissions through counsel, Mr Morris. The applicant, Mr Willms did not attend to make oral submissions but later was granted the opportunity to respond in writing. His response was received on 17 June 2005 and considered by the Commission. The second objector, Mr Robertson, chose to simply rely upon his oral evidence as provided at the hearing.
4. The relevant portions of the current licence for The Banyan Tree Caravan Park and Store (the Banyan Tree) read as follows:

Consumption on the Premises

- (a) *Liquor may be sold for consumption on premises in conjunction with a meal between the hours of 1200 and 2000 (7 days a week).*

Tourist Vehicles

- (b) *At any time to members of the public travelling to the premises by registered Omnibus or tourist vehicles TV1 And TV2 under the **Commercial Passenger (Road) Transport Act 1991** (or any similar interstate legislation), for consumption on the premises.*

Wine

- (c) *The sale of wine is only permitted for consumption on the premises in conjunction with a meal. No cask wine to be sold at any time.*

Takeaway Hours

- (d) *To bonafide residents of the caravan park between the following hours:*

Monday to Friday 10:00 hours to 22:00 hours

Saturday and public holidays 09:00 hours to 22:00

Sunday 12:00 hours to 20:00 hours.

Takeaway sales are restricted to cans of beer only with a limit of 6 per person per day for sale to bonafide residents only.

No trading on Good Friday or Christmas Day.

5. At the outset of the hearing, Mr Willms appeared confused as to the terms of his current licence but was also clear that he sought greater changes than that licence allows. He does not, however, wish to pursue a full takeaway licence but instead, he wishes to sell takeaway beer by the carton to 'everybody who asks for it'. He has no intention of selling takeaway wine or spirits.
6. Mr Willms advised that there were three groups that he hopes to service with his takeaway beer outlet. They are:
 - a) The guests of his caravan park who are mainly retired persons. The variation would allow these guests to purchase a carton of beer from him to take away with them;
 - b) The residents who reside along Windmill road within 3 kilometres either side of the Banyan Tree. Mr Willms advised that there were approximately 30 residences containing 80-100 residents in the area surrounding the caravan park and he would like to be able to sell them a carton of beer at the same time as he sold them their bread, milk and paper; and
 - c) Visitors to Litchfield National Park who might want to purchase some beer during their stay in the park.
7. Mr Willms made it quite clear in his evidence that he did not anticipate running a large takeaway liquor outlet as he did not have the will, the facilities or the storage capacity to consider such trade. Instead, his concept was a modest one where a variation would simply allow him to sell small amounts of takeaway beer upon request as an ancillary service only to his principal business as a caravan and tourist park operator. He advised that the shop at the Banyan Tree was open between 7.30am and 7.30pm and he did not require a takeaway licence later than the closing time of the shop. Finally, Mr Willms also advised that he would like to be able to offer coach passengers visiting the Banyan Tree a glass of wine without a meal upon request. He supported his application with a signed petition completed by members of the public attending his premises over 3 or 4 weeks in October 2004. A further petition was available for signing at a takeaway food outlet in Batchelor. Also attached were letters of support from the Coomalie Community Government Council, Tourism Top End, APT and Aussie Adventure Holidays. Whilst the Commission acknowledge some of the inadequacies of these documents as raised by Mr Morris, Counsel for the Northern Territory Commissioner of Police, they were of some assistance to us in our decision making.

8. The NT Police strongly oppose the Banyan Tree being granted any variation to the current terms of their licence. Mr Morris called Brevet Sergeant Neale Carlon to give evidence. He also called Mr John McCartney, Chief District Ranger for the area including Litchfield National Park. Both of these witnesses expressed their concerns at any variation to allow the sale of takeaway liquor to park visitors.
9. Sergeant Carlon expressed his concerns about the difficult road conditions within the Litchfield National Park (the Park) and provided a breakdown of the 24 reported road accidents within the Park since August 2001. Whilst alcohol was not a reported cause in the majority of those accidents, many appeared to have been caused in part by the difficult road conditions. Whilst there are plans on foot to upgrade the road, this will not happen immediately and thus the difficult road conditions (and in particular its camber) remains an issue to be taken into account.
10. Sergeant Carlon was also concerned by complaints received by tourists about anti-social behaviour at various Litchfield National Park campsites. He acknowledged that the 4 official campsites are small and crowded and that the consumption of alcohol by campers simply exacerbates already difficult camping conditions. Sergeant Carlon is concerned by the difficulty the Police have in supervising these campsites and swimming areas. Most are at least 30 minutes drive from the Batchelor Police Station with no easy telephone communication available. He gave the example of an incident of anti-social behaviour on 26 March 2005 at Buley Rockholes where alcohol was a contributing factor.
11. Finally, Sergeant Carlon considered that park visitors might consider leaving the park to obtain more alcohol from the Banyan Tree when they would not do so if they were forced to travel the further 12kms into Batchelor to the Rum Jungle Motor Inn. (The Rum Jungle Motor Inn has a full takeaway licence). The rationale behind his thinking was that the visitors might be more reluctant to take the risk of travelling into Batchelor (where the Police Station is) if they had any concerns that they might be already "over the limit" with respect to their alcohol consumption. This concern regarding police detection would be erased if they could simply obtain their takeaway supplies from the Banyan Tree without needing to travel on into Batchelor.
12. Mr McCartney (Senior Park Ranger) had similar concerns to that of Sergeant Carlon. He advised that his 10 Rangers currently join with Police to patrol the parks as required to ensure that antisocial behaviour is curbed. He identified the main culprits to be young people from Darwin drinking both heavy beer and pre-mixed spirits. He noted that broken glass was a problem at times especially when found in the waterways. General littering with cans and bottles was also a problem.
13. Mr McCartney stated at paragraph 21 of his written statement: *I have not received comments from any campers saying that they would like to see alcohol outlets closer to the park. We, Parks and Wildlife do surveys as does Territory Tourist Commission which produces quarterly reports. These include visitor's comments which are usually negative about alcohol, saying they don't like to see this kind of antisocial behaviour. They write comments like 'my time at LNP would have been much more pleasant if I could have got a good night sleep'. Mr McCartney went on to say in paragraph 22 of the statement; 'I guess people are responsible for their own actions, but as a private citizen of Batchelor I don't see the need for another takeaway outlet. I buy my beer in Palmerston, not locally. I would say that this is the case with most people in Batchelor who buy mainly in Darwin or Palmerston, and only the occasional 6pack from the pub (The Rum Jungle Motor Inn)'*
14. Mr Robertson had no concerns about the attitude of Mr Willms as a licensee and neither did he have concerns about takeaway liquor being sold to guests of the Banyan Tree. His principal concern was that there is no control over the manner in which or the places where takeaway is consumed by wider members of the public and he gave examples of the littering he has encountered as a result of people acting irresponsibly in the Finnis River area. There does not appear to be "an itinerant drinking" problem such as we have encountered in other recent applications for a takeaway liquor licence. Mr Robertson was

concerned however, at the impact of a takeaway liquor outlet so close to the Park and queried the level of demand for a second outlet.

15. In deciding whether or not to grant this variation, the Commission must look to the Objects of the *Liquor Act* as set out in Sections 3 and 6. It appears to us after hearing all of the evidence that the main issues for consideration are as follows:
 - a) the need to ensure that public order and safety -particularly within Litchfield National Park- is not jeopardised;
 - b) the need to protect and enhance community amenity, social harmony and wellbeing within the Banyan Tree Caravan Park, its immediate neighbourhood and the National Park through the responsible sale, provision, promotion and consumption of liquor; and
 - c) the need to facilitate a diversity of licensed premises and associated services for the benefit of the community.
16. The Commission found Mr Willms to be an upright, honest witness with a clear concept of the type of service he wishes to provide by seeking this variation. He fully acknowledges that he does not have the capacity to provide anything more than a modest takeaway liquor outlet until 7.30pm in the evenings. He further has no wish to sell anything other than beer.
17. Had Mr Willms maintained his application for a full liquor licence, we would have refused to grant it for a number of reasons. The application before us however, is quite modest and appears to be within the capabilities of this licensee to properly maintain. After considering all of the evidence and following a view of the licensed premises, the Commission has reached the conclusion that a limited takeaway liquor licence containing specific conditions to protect the community amenity is in the public interest. There is only one other outlet close by-being the Rum Jungle Motor Inn-and we consider that carefully drafted licence conditions will provide a service to the customers and neighbours of the Banyan Tree that is not available at present.
18. In granting a limited liquor licence to the Banyan Tree, we are not dismissing the valid concerns about antisocial behaviour within the National Park as expressed by Sergeant Carlon and Mr McCartney and Mr Morris. We consider however that their concerns can be addressed in the licence conditions and restrictions we intend to impose and we have based our decision on the following conclusions on the evidence:
 - a) We have formed the view that the provision of a limited takeaway licence of the type envisaged by the applicant will benefit guests of the Banyan Tree, their immediate neighbours and National Park visitors. We note that whilst most of the signatories to the applicant's petition were visitors, a number were local residents. We also accept Mr Willm's evidence that some residents have sought takeaway beer from him when making other purchases. Further, no evidence is before us to suggest that there is antisocial behaviour within the immediate neighbourhood of the Banyan Tree that will be exacerbated by a limited licence variation to allow the sale of a carton of beer to them. We also accept that guests of the caravan park will benefit from the fact that they can obtain a carton of beer without having to travel back into Batchelor. The majority of these guests are elderly tourists who generally appear to consume alcohol responsibly in any event.
 - b) There was clear evidence provided to us of a low level of antisocial behaviour in the National Park that was alcohol related. We also accept that police and park rangers have limited resources to adequately respond to problems within the Park should they arise. It is our view however, that a limited licence with appropriate conditions at the Banyan Tree will not jeopardise public order and safety. Any visitor camping in the National Park need only travel 12kms or thereabouts past the Banyan Tree in order to obtain whatever takeaway liquor they desire. Our belief that this extra distance to travel and the threat of a police presence will not deter them is based in part on the fact that very few drink-driving charges appear to have been laid by Batchelor Police in the

recent past. Further, our intention to restrict beer sales to one carton of beer in cans per vehicle and to prohibit roadside and external advertising will minimise the potential for harm of attracting and selling to youths from Darwin who might cause antisocial problems.

19. We intend to vary paragraph(d) of the licence conditions entitled '**Takeaway Hours**' by removing the words:

Takeaway sales are restricted to cans of beer only with a limit of six (6) cans per person per day for sale to bona fide residents only.

and inserting the following:

A) *Takeaway sales are restricted as follows:*

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 3km 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 the 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 principal business of a Caravan Tourist Park.

D) The implementation of the licence variation is suspended until the liquor storage area within the Banyan Tree Licensed premises are made sufficiently secure to the satisfaction of the Director of Licensing.

E) The Licence is granted to Harald Willms and is not transferable.

F) The licensed hours for takeaway beer are varied as follows:

a. 9:00am to 7:30pm on Saturdays

b. 10:00am to 7:30pm from Monday to Friday

c. No trading on Christmas Day, Good Friday and every Sunday.

20. The only remaining issue is whether or not to allow a minor variation to the current licence to enable the licensee to sell wine by the glass to coach passengers without the requirement of them also purchasing a meal. Whilst this request has not been advertised and does not form part of the application for a takeaway liquor licence, Counsel for the Police, Mr Morris, has indicated that the Police would hold no opposition to this variation. The Commission can see no reason not to grant this minor variation and accordingly, the licence shall be varied by removal of the following licence condition:

Wine

(a) The sale of wine is only permitted for consumption on the premises in conjunction with a meal. No cask wine to be sold at any stage.

Brenda Monaghan
Presiding Member

27 June 2005