

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Biggles Highway Inn
<b>Date of Decision:</b>	19 April 2000
<b>Date of Hearing:</b>	26 to 28 October 1999 28 January 2000 (directions) 22 & 23 February 2000
<b>Application:</b>	Grant of Licence
<b>Applicant:</b>	Michael Rochford on behalf Tally Won Pty Ltd
<b>Heard Before:</b>	Mr Peter Allen (Chairman) Mr John Withnall (Member) Ms Shirley McKerrow (Member)
<b>Appearances:</b>	Mr Paul Walsh for Applicant Mr Gordon Berner for Liquorland (Australia) Pty Ltd & JTR Investments Mr Tom Anderson for NT Police
<b>Objectors:</b>	Liquorland (Australia) Pty Ltd C/-Liquorland Palmerston JTR Investments Northern Territory Police

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For reasons which will be published in full in due course, the Commission has determined to grant a licence to the applicant for the sale and consumption of liquor at premises to be known as "Biggles Highway Inn" within a retail development proposed for Sections 5124, 5125, 5126 and 5127 of the Hundred of Bagot as shown in the amended concept design which constitutes Exhibit 25.

The only objector appearing at the hearing not able to be characterised as a potential competitor in the market place was the NT Police, whose Counsel quite properly identified the task of the Commission in relation to the police evidence as having to weigh the risks as proposed by the Police against all other evidence in the proceeding. Such a process on balance persuades the Commission to exercise its discretion in favour of the development as now proposed.

It was submitted on behalf of the so-called "commercial" objectors that the applicant's concept evolved reactively during the course of the hearing, and in the Commission's view such complaint was not without foundation; Mr Coleman conceded as much in evidence. However, the Commission must assess the entirety of an applicant's presentation, and in this matter certain key elements which were reconsidered by Mr Coleman during the course of his evidence did improve the applicant's position to such an extent that that they will be tied into the resultant licence by the imposition of appropriate conditions.

Pursuant to the provisions of Section 26(2) and Section 31(3) of the *Liquor Act*, an on and off licence is granted in respect of the premises as proposed by the applicant, subject to the condition that the sale of liquor on and from the premises is not permitted until the approval in writing to do so shall have been obtained from the Commission. Such approval will be given, and the licence issued, upon the Commission's satisfaction that the premises have been completed in substantial accordance with the applicant's presentation to the Commission at the hearing and that the applicant is ready to trade in a manner consistent with the amended concept that has been presented to the Commission (and hence to the public) at the hearing.

The Commission has determined that it will not regard the premises as having been completed in accordance with the concept accepted by the Commission unless and until the whole development concept as redesigned in Exhibit 25 shall have been completed and occupancy permits shall have issued not only for the licensed premises but also for all the tenancies shown in that design. The tenancies need not be actually tenanted; what we are insisting on is that the whole development be finished and ready for business before the licensed premises may open for business.

The licence shall also contain conditions requiring:

1. The promotion of low alcohol or "light" beverages, with maintenance of pricing differentiation;
2. Maintenance of a family-type atmosphere or ambience in the bistro, and all promotion of the tavern to emphasise the bistro's family orientation;
3. Meals to be available in the bistro at all times that the licensed premises are open for the sale of liquor;
4. Provision and maintenance of a dedicated area for activities for children of patrons, to the satisfaction of the Commission;
5. Promotion of Drink Sense and other like campaigns within the licensed premises;
6. Provision of adequate security;
7. Provision of patron care training for all staff;
8. Removal of any signage or advertising hoarding relating to the licensed premises which in the opinion of the Commission is excessive, offensive or otherwise unacceptable.
9. Sales of cask wine from the bottleshop to be restricted to premium brands in casks not exceeding 2 litres;
10. The practice of "book up" or "book down" to be prohibited, and the licence to issue with such restrictions spelled out in full detail;
11. The operation of the premises to remain true to the concept presented to the Commission at the hearing, such that any significant deviation from the promised nature or detail of operation may result in a review of licence conditions by the Commission on its own initiative;
12. The suspension of the licence for such time as any of the businesses at or within the development shall be operating as an automotive service station or fuel outlet.

Trading hours shall be as requested, unless only that at the time the licence is issued the trading hours shall have been affected by intervening Government regulation or the Commission may otherwise be able to regard other or different trading times as then having become standardised for an operation of this type and location.

The Commission reserves the right to "flesh out" or further particularise any of the above conditions as it may see fit when the written licence eventually issues upon satisfactory completion of the premises. The licence will also contain such standardised conditions as may at that time be usually contained in this type of licence (e.g. compliance with Chief Fire Officer's assessment of maximum patron densities, disclosure of management agreements, compliance with Health regulations etc).

The applicant now has what is sometimes referred to as a licence in principle. In terms of its duration in this guise, it is not to be open ended; it is a further condition of its grant that it may be cancelled by the Commission if upon the expiration of a period of eighteen calendar months from the date hereof the applicant shall have failed to obtain from the Commission either the approval to commence trading as aforesaid or an extension of time within which to seek such approval. The

allowance of any such extension of time shall be a matter entirely within the Commission's absolute discretion.

The licensee should liaise with the Director of Licensing in the event that any of the foregoing matters should give rise to any queries at any time.

Peter R Allen  
Chairman

19 April 2000