

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Headframe Bottleshop Lot 186 Paterson Street, Tennant Creek
Licensee:	Whyteross Pty Ltd
Licence Number:	81002243
Proceeding:	Application to vary licence conditions
Heard Before:	Peter R Allen (Chairman)
Date of Hearing:	15 October 2002
Date of Decision:	23 December 2002
Appearances:	Mr Graham Whyte for the Licensee Mr Tony Young for the NT Police Ms Sally Guerin for the Julaikari Council Aboriginal Corporation

Preamble:

It should be noted that in the intervening period between the conduct of the hearing and the handing-down of this decision, the Minister for Racing, Gaming & Licensing, pursuant to the powers contained within the *Northern Territory Licensing Commission Act*, has appointed persons to be Members of the Commission. Mr Brian Rees, a member at the time of the hearing and whose term of appointment has since expired is not among the persons so appointed.

As a consequence of Mr Rees's departure from the Commission, this proceeding assumes in my view, the status of a hearing conducted pursuant to Section 51(10A) of the *Liquor Act*, a hearing "where the Commission is constituted by one member". Thus the provisions of Section 51, sub-sections 10B, 10C & 10D of that Act become applicable and "a party who is not satisfied with the decision of the Commission may apply, within 14 days after the decision, in writing to the Chairman for a new hearing."

Decision:

1. The application to be determined is an application to vary the licence conditions of the Headframe Bottleshop, a "stand-alone" bottleshop, situated on Paterson Street at Tennant Creek.
2. The "Headframe" is subject to what are commonly known as the "Tennant Creek restrictions". The most recent Decision of the Commission pertinent to the restrictions was handed down on 17 December 2001. The licence conditions applicable to the restrictions on the sale of liquor in Tennant Creek are contained within the body of the applicant's licence.
3. The applicant has been subject to the restrictions since they were first initiated on a trial basis in 1995. Of particular significance to the applicant licensee is the total ban on the sale of take-away liquor on Thursdays. Initially the licensed clubs of Tennant Club were not subjected to this condition, however they were included by the Commission's decision of 17 December 2001.

4. The Headframe is however permitted to trade in take-away liquor on Sundays, as are the hotels and clubs. The Headframe is Territory's only "store" licence permitted to trade on Sundays, a condition inserted into the licence simultaneous with the insertion of the condition prohibiting sales of take-away liquor on Thursdays.
5. The application to vary the conditions of the licence was properly advertised in the *Tennant and District Times* dated Friday 31 May 2002.
6. The nature of the variation sought is to allow the sale of liquor on Thursdays for a trial period of 6 (six) months between the hours of 12 Noon and 4:00PM, to a limit of 6 cans of beer per person per Thursday.
7. As trading on weekdays in Tennant Creek normally ceases at 9:00PM, five hours later than proposed for the trial, and that except for a one cask per person limit on wine casks, any category, style or quantity of liquor is available throughout the remainder of the week; it could be argued that the proposed variation is of a minimal nature.
8. Objections pursuant to Section 48(1) were received from the Northern Territory Police, Dr Michele Luey and from Katrina Budrikis on behalf of the Julalikari Council Aboriginal Corporation. Each of the objections was properly made out pursuant to Section 48(3) of the *Liquor Act*. Dr Luey did not pursue her objection beyond the lodging of a signed letter to the Director.
9. The Tennant Creek Town Council did not object to the application. The Commission was informed of the Council's position by a letter to the Director dated 20 June 2002 and signed by its Chief Executive Officer.

The letter stated:

The Council resolved that it has no objection to the variation in the opening hours for a six-month trial and that sales are to be restricted to 375ml cans of light beer only.

For completeness it can be noted that the advertised application was silent as to the type of beer proposed for sale during the trial period whereas the Council, although not objecting, qualified its position as being one of "light beer only".

10. The Commission is directed by the Act as to the factors it must consider when determining licence conditions. The specific requirements are contained in Section 32 and include the location of the licensed premises, the location and conditions of any licensed premises in the vicinity of the premises that are the subject of the application and the needs and wishes of the community.
11. As the Tennant Creek community has been subject to restrictions since 1995 and the restrictions have been subject to intensive and extensive reviews on two occasions, the last being during 2001, the requirement to have regard to "the needs and wishes of the community" is seen as being of particular importance in the Commission's consideration of the current application.
12. In his evidence Mr Whyte tendered a letter of support from the Barkly Branch of the Chamber of Commerce and Industries. This letter forms Exhibit 2. Mr Whyte also tendered questionnaires arising from his personal survey of business houses in the main street of the township. These questionnaires form Exhibit 6.
13. Mr Whyte sought to tender a videotape, recorded personally, of interviews conducted by him with a range of local residents and business people. The tender was not accepted in the absence of oral evidence from the persons interviewed and the opportunity for cross-examination. Presumably the tape included the views of some members of the Chamber of Commerce and Industries.
14. Mr Whyte was offered and accepted the opportunity provided by an adjournment, to approach those persons who had participated in the taped interviews or the questionnaires.

Upon resumption, no person came forward to assist Mr Whyte and no reasons other than those advanced by Mr Whyte as to those he approached being “very busy in their businesses”, were made available for the Commission’s consideration.

15. Although the Commission heard evidence from the objectors, interposed during the hearing, no regard has been given to that evidence or to the detail of the written objections. The Commission believes the application can be decided without recourse to that material.
16. In the Commission’s view the onus of positively persuading it that an application somehow conforms to the needs and wishes of the community lies with the applicant. In order to be so persuaded a sufficient body of evidence must be sighted and assessed by the Commission. Beyond the qualified support of the Town Council and the otherwise untested questionnaires and letter from the Chamber, no such body of evidence was placed before the Commission for assessment and for testing by cross-examination.
17. This is not to say and should not be taken to read that Mr Whyte was somehow less than honest in his submissions and his presentation of material to the Commission. What the Commission does say however, is that the evidence presented was incomplete and insufficient to satisfy it that the needs and wishes of the Tennant Creek community favoured the variation.
18. Although Mr Whyte’s application is for an arguably minimal variation, the requirement to satisfy the test of needs and wishes cannot be put aside regardless of the scope of the application; a factor of particular significance in the context of the Tennant Creek restrictions.
19. Mr Whyte faced and has failed to clear the relatively high hurdle that applies in the circumstances of his application; lodged only a few months after the completion of an intensive and community-based review of restrictions on the sale of liquor in the town and beyond. A review that confirmed the existing restrictions and extended these to include for clubs the ban on take-away sales of liquor on Thursdays. Accordingly, the application to vary the conditions of the licence is not approved.

Peter R Allen
Chairman

23 December 2002