Northern Territory Licensing Commission

Reasons for Decision

Hearing:	Pursuant to Section 33 of the *Liquor Act*-A Review of the Proposed Variations to Licence Conditions
Date:	1 July 2008
Applicant:	Headframe Bottleshop
Commission Members:	Mr Richard O'Sullivan (Chairman) Mr Paul Fitzsimon Mr Wally Grimshaw
Appearances:	Mr Graham Whyte, Licensee, Headframe Bottle Shop Mr Andrew Shackcloth, Nominee, Headframe Bottle Shop Mr Chris McIntyre, Deputy Director South Mr Andrew Cross, Licensing Inspector

Background

1. The Northern Territory Licensing Commission ("the Commission") handed down a decision on 15 May 2008 on Takeaway Hours for Tennant Creek and Threeways to apply from 1 August 2008. This decision provided further restriction on takeaway sale of alcohol and followed a Public Hearing on 5 March 2008.

2. The takeaway hours determined in the May decision were as follows:

Monday to Friday:	*2:00pm to 8:00pm*
Saturday and Public Holidays:	*12:00midday to 8:00pm*
Sunday (Clubs and Hotels only):	*2:00pm to 8:00pm*

   All cask wine, fortified wines and Stones Green Ginger Wine to be sold from licensed outlets from 4.00pm to 6.00pm only.

   One (1) bottle or one (1) cask only of the above products per person per day.

   750ml or 800ml beer bottles (long necks) not to be sold.

3. Prior to this decision the takeaway hours were:

Monday to Thursday:	12:00midday to 8:00pm
Friday, Saturday and Public Holidays:	12:00midday to 9:00pm
Sunday:	12:00midday to 9:00pm

4. During the Hearing of 5 March 2008 and during public consultation prior to that Hearing there was a significant level of support for further restrictions on the availability of alcohol, particularly related to takeaway and the high risk products such a fortified wine and cask wine.

5. An Alcohol Management Plan for Tennant Creek was finalised following Hearing and was considered by the Commission in determining its decision. This Plan called for the Commission / Government to: *"implement, monitor and evaluate more stringent Supply Plan provisions in Tennant Creek. Potential provisions include:*

   - *A measure to further reduce alcohol consumption with emphasis on low price, high level alcohol products."*

6. The Chairman of the Commission wrote to both the Licensee and Nominee of the Headframe Bottleshop ("the Headframe") on 21 May 2008 advising of the Alcohol Supply Restrictions determined in the decision of 15 May 2008. The advice was conveyed pursuant to Section 33(1) of the *Liquor Act* ("the Act") which provides that: *"Subject to this section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a Licensee".*

7. The Licensee and Nominee were advised of the new takeaway hours proposed to apply from 1 August 2008 as follows:

    - Monday to Friday between the hours of 2:00pm to 8:00pm;
    - Saturday and Public Holidays between the hours of 12:00midday and 8:00pm;
    - Takeaway sales of cask wine, fortified wine and Stones Green Ginger Wine to be limited to the hours of 4:00pm to 6:00pm only;
    - Takeaway sales of 750ml and 800ml beer bottle (long necks) prohibited.

8. In this correspondence the Licensee / Nominee was advised of the right under Section 33(2) of the Act to seek a Hearing into the Commission proposal to vary the licence conditions.

9. Mr Graham Whyte, Licensee of the Headframe advised of his request for a Hearing under Section 33(2) of the Act on 3 June 2008.

Hearing

10. Mr Whyte commenced his submission with the reading of the greater part of a Legal Opinion provided by Mr R G Bain, QC dated 5 December 2001 into issues of disadvantage being imposed on the Headframe in terms of competition with other licensed outlets and which also dealt with the issue of compensation for this disadvantage and impact on trading caused by variations to the licensing conditions of the Headframe.

11. This advice was submitted to the Commission (Exhibit 1) for consideration by the Hearing Commissioners.

12. The Commission noted that Mr Bain, QC mounted an argument for compensation largely based on the lessening of the value or rights involving pecuniary loss to the Headframe and he likened this to having something taken away or acquired from a commercial enterprise.

13. The argument goes on to proffer that if cancellation of a licence attracts compensation under the Act that a lessening of the value or rights of the business would therefore also attract compensation. This argument has been discounted by the Commission in the past and while not an integral matter for the Commission to determine under the current issues at Hearing, it is inclined to a similar point of view.

14. Mr Whyte advised that he formally sought a Review of 15 May 2008 decision to allow the Headframe to commence trade at 12:00midday on trading days with the sale of mid strength and light beer only until 2:00pm.

15. He outlined the loss of trade caused to his business from a series of Alcohol Restriction measures over the past twenty (20) years. It was argued that allowing hotels to commence bar trade at 12:00midday would give hotels an advantage as patrons would commence purchasing alcohol at that time and would be at those locations at the time of commencement of takeaway trade.

16. Mr Whyte also raised the issue of his premises not being able to trade on Sunday, a condition which put him at a competitive disadvantage to the hotels and clubs which are able to sell takeaway as well as see alcohol for on premise consumption.

17. Mr Whyte also tabled a series of Press Clippings (Exhibit 2) which largely dealt with the issue of alcohol substitution and the movement of people when alcohol restrictions were imposed on a town or region.

18. The issue of alcohol sale restrictions resulting in people moving to other localities was also presented by the applicant through a transcript of an SBS news bulletin, illustrating the potential for people to move to new localities when severe alcohol restrictions are imposed in their township or community.

19. The Commission took regard of the candid presentation of Mr Whyte including his forthrightness and evident responsibility in the conduct of his licence activity. His submission was largely based on the competitive disadvantage experienced by his business in not being able to trade on Sundays and hotels and clubs consuming on premise sales two (2) hours before his business is able to trade. This is the reality with takeaway licensed stores in other localities such as Alice Springs. The unique aspect of the Headframe is that its trade is the sale of alcohol products and beverages only.

20. Mr Whyte's argument for trade to commence at 12:00midday to 2:00pm with the sale of mid strength and light beer only was carefully considered by the Commission. It was not persuaded to vary its decision of 15 May 2008 as it considered most drinkers wanting an alcohol drink at 12:00midday would be catered for through on premises and regulated consumption. Allowing the Headrame 12:00midday until 2:00pm for trading of mid strength and light beer, would likely generate pressure for similar conditions of takeaway for the other licensed takeaway outlets in Tennant Creek and Threeways. This would add even more complexity to takeaway restrictions, noting the 4:00pm to 6:00pm restriction for cask wine and fortified wine. The Commission overall considered that given the pattern of drinking outlined by Licensees during consultation and at Hearing, the introduction of earlier takeaway for light / mid strength beer products was not likely to have any discernable impact on sales or overall alcohol consumption and its link to anti social behaviour in the township.

21. Mr Chris McIntyre, Deputy Director Southern Region provided a brief history of trading restrictions in Tennant Creek and the various changes to these restriction which had over time varied impacts on the Headframe, including at times substantial disadvantage when compared to takeaway sale competitors.

22. Mr McIntyre also outlined that the greater percentage of alcohol sold in the Northern Territory is by takeaway outlets. He then referred to a survey of people and their alcohol consumption habits, eighty-five percent (85%) of whom purchased their alcohol at a licensed takeaway outlet.

23. The Headframe Nominee, Mr Andrew Shackcloth stated that the imposition of restrictions would have some material consequences on products sold with alcoholics attempting to feed their habit. He illustrated this point with the advice that since the Federal Intervention in the Northern Territory the sale of the highest alcohol content product, spirits, had gone up by thirty percent (30%) at the Headframe.

24. He also referred to the new Supply Measures to come into effect on 1 August 2008 which would allow drinkers to go into hotels and consume excessive amounts of liquor and then come into bottleshops in an already intoxicated state. This implied that they should not be served and for a stand alone bottleshop such as the Headframe this would impact on their business.

Decision

25. The Commission is bound by the objects of the Act which under Section 3 has the prime objective of:

3 Objects

(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor –

(a) so as to minimise the harm associated with the consumption of liquor; and

(b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

26. There was nothing conveyed at Hearing by the applicant which caused Commissioners to vary the earlier decision, mindful of the prime objectives of the Act.

27. The Commission on Review has satisfied itself as to the procedural fairness accord in reaching the decision on 15 May 2008. This decision was in accord with the body of public opinion expressed to the Commission and was also in accord with the Alcohol Management Plan prepared following wide consultation with affected parties in the township of Tennant Creek.

28. The Commission therefore has determined not to vary the hours advised under Section 33(1) of the Act for the Headframe. The Commission in reaching this decision does sympathise with the commercial interests of the Licensee and recognises that this licence variation, along with a number of earlier licence variations, has a deleterious impact on the trading position of that business.

Richard O'Sullivan
Chairman

10 July 2008