

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Fernanda's
Licensee:	Mrs Fernanda De Sousa
Proceeding:	Sec 33(3) Hearing
Heard Before:	Mr John Withnall (Presiding) Mrs Mary Ridsdale Mr Brian Rees
Date of Hearing:	04 September 2001
Date of Decision:	17 December 2001

Following her receipt from the Licensing Commission of a notice varying the conditions of the liquor licence of Fernanda's pursuant to Section 33(1) of the Liquor Act, nominee Mrs De Sousa exercised her right under Section 33(2) of the Act to seek a hearing into the conditions of the licence.

The hearing took place at Tennant Creek on 4 September 2001.

The effect of the variation which the licensee was challenging at the hearing was to restrict service of liquor in Fernanda's on "Thirsty Thursdays" to being ancillary to a substantial meal ordered from the normally available menu.

The nature or endorsed "authority" of Fernanda's licence is that of "Tavern"; the licence permits a public bar type of operation, although at a previous Commission hearing on 1st November 2000 Mrs De Sousa in evidence constantly referred to the premises as a restaurant, even while emphasising that what she had was a tavern licence. The business name is that of a "cafe and restaurant."

When Mrs De Sousa's family company purchased the business in October 1999 the premises had previously been known as the Dolly Pot, operating on a liquor licence which accommodated the unusual conjunction of award-winning restaurant and public squash courts. The licence does not require the service of liquor to be ancillary to a meal, nor even the premises to trade predominantly as a restaurant; it is an unconditional "on-licence".

The outcome of the previous hearing was that Mrs De Sousa's opening time on Thursdays was put back to the normal restaurant opening time of 11.30 am. No other changes were made; she still retains a tavern-type licence, and her trading hours other than on Thursday mornings remained unaffected by that decision.

The Section 33 notice challenged by Mrs De Sousa followed a general review by the Commission of licence conditions in Tennant Creek, and reflected the Commission's disquiet with the conspicuous non-restaurant trading still being enjoyed by Fernanda's on Thursday mornings before the hotels could open, when large numbers of persons who would normally patronise the two hotels in town were transferring their allegiance to Fernanda's to take advantage of the opportunity to commence their drinking thirty minutes before the hotels are able to open on that day. Mrs De Sousa acknowledges that the liquor consumption on her premises in that circumstance has not been in conjunction with any patronage of the restaurant facilities.

In fact, the Commission detects a shift in ground on Mrs De Sousa's part since the previous hearing. She now emphasises the tavern-like parameters of her licence conditions rather than the predominance of the restaurant in her over-all trading operation. She compares her licence with the two other tavern licences in Tennant Creek (the two hotels) and points out that they too include

a restaurant within their premises, yet have not been forced by the Commission to restrict liquor service on Thursdays to patrons who partake of a substantial meal there. Essentially she claims that to restrict only *her* tavern licence in that way is discriminatory.

The Commission has carefully considered everything Mrs De Sousa has put to it, and all material that was before it as part of the hearing, including a written submission from the Julalikari Council Aboriginal Corporation, and we have concluded that we should accept Mrs De Sousa's position that whatever restrictions she is to endure should be indicative of a more level playing field vis a vis Fernanda's and the two other tavern licences in town. Such an approach necessarily ignores the distinctively different licence histories, but on reflection would appear to be the more effective approach to our continuing consideration of liquor trading conditions in Tennant Creek.

We therefore propose to deal with Fernanda's more uniformly with the hotels in our ongoing review of liquor restrictions in Tennant Creek.

In wanting to be treated more even-handedly as a tavern licence, however, there is an immediate issue for Mrs De Sousa as to whether she should be perceived as a "front bar" or a lounge bar in terms of Thursday tavern restrictions in Tennant Creek. She of course argues strongly for the latter perception, and invites on-site comparison of her premises on Thursdays with the standard of operation of the bar areas which remain open at the two hotels on Thursdays. If she is to be treated as a front bar, she will not be able to open the premises at all on Thursdays.

The Commission is familiar with all the relevant premises, and has come to the decision that Fernanda's should not be designated a front bar in the Thursday context.

It follows that Mrs De Sousa may continue to trade on Thursdays as she has been doing, but will not be permitted to open at all on Thursdays until 12 noon. The formal orders are as follows:

1. The notice pursuant to Section 33(1) of the Liquor Act dated 10 July 2001 is withdrawn;
2. The conditions of Licence No. 80300212 are varied by deleting from the Trading Hours "Thursday 11.30 and Thursday 23:59" and substituting "Thursday 12:00 and Thursday 23:59".

We flag for Mrs De Sousa that our foregoing decision will have further ramifications for her. At the time of handing down this decision, the Commission will be in Tennant Creek to announce further restrictions affecting on-premises licences, and Fernanda's will be treated in the same way as the hotels in relation to these new restrictions. Along with the hotels and clubs, Mrs De Sousa will be receiving a further Section 33 notice detailing the new restrictions, and along with the hotels and clubs she will be able to request a further hearing in that regard.

We emphasise however that in the context of the new restrictions she will find that she has been treated quite uniformly with the other tavern licences in the town.

John Withnall
Presiding Member

17 December 2001