

NORTHERN TERRITORY LICENSING COMMISSION

Reasons for Decision on Application by Tennant Creek Council for a Public Restricted Area and Review of the Tennant Creek Liquor Supply Plan

Applicant:	Tennant Creek Town Council
Date of Hearing:	5 March 2008
Date of Decision:	15 May 2008
Legislation:	Part V111 Divisions 1B, and 2 of the <i>Liquor Act</i>
Member:	Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Wally Grimshaw
Appearances:	Mr John Hunter, CEO Tennant Creek Town Council Mr Stuart Naylor, BRAADAG Mr Jeff Warner, General Manager Anyinginyi Health Superintendent Bruce Porter / Sergeant Mark Nash Northern Territory Police Ms Michelle Brown, Chairperson of NT Government Regional Coordination Committee Mr Kevin Diflo, Community of Elders Mr Graham Whyte, Licensee / Owner Headframe Bottleshop Mr Tony Miles, CEO Julalikari Council

BACKGROUND

- 1) The Tennant Creek Council ("the Council") on 7 August 2007 made application under Section 86A of the *Liquor Act* ("the Act") for the declaration of a Public Restricted Area over all public places within the entire Tennant Creek Municipal boundary. This application also included NT Portion 1744, an area under the control and management of the Tennant Creek Council as registered proprietor over Perpetual Lease Number 164, commonly known as Mary Ann Dam.

- 2) This application followed a Council meeting on 26 June 2007 at which the “Little Children are Sacred” report was tabled. At that meeting Council resolve amongst other things to:
 - *“Immediately commence action to have the town declared a “Dry” Town”;*
 - *Start work on the implementation of an Alcohol Management Plan for the Town;*
 - *Request the NT Government to cancel all liquor licences in town that are not currently in active use.”*
- 3) The Council stated in this application that: *“The town is beset with problems relating to alcohol consumption around the town. Excessive loud noise and fighting along with discarded casks and cans are just some of the problems”.*
- 4) The Licensing Commission’s (“the Commission”) response to the Council’s application was to conduct consultations, receive submissions and conduct a Hearing in relation to the “Dry” Town. At the same time, the Commission advised it would review the Alcohol Supply Restrictions operating in the Town. In determining to review the Alcohol Supply conditions the Commission noted that the current restrictions on hours and specified products had come into effect on 1 July 2006. As part of that decision into the introduction of these restrictions, the Commission advised that it would be reviewing the Alcohol Supply Measures once data covering a reasonable period of time was available.
- 5) On 12 October 2007 Mr Stuart Rhee, Acting CEO of Council advised of a change to the original application and that Mary Ann Dam was, for the time being, to be excluded from the “Dry” area application. Council requested that this exclusion be applicable for a three (3) month or longer period to enable monitoring of the use of this area. Council’s decision to exclude this area was on the basis of public feedback on the need for an area where Tennant Creek residents could have barbeques and recreation with consumption of alcohol.
- 6) Advertisements were placed by the Commission in the local media in August 2007 seeking submissions on the application for a “Dry” Town and submissions relating to the review of the current Alcohol Supply Measures. Further advertisements were also placed advising of the public meeting to be held on 30 October 2007.
- 7) The public meeting discussed both the “Dry” Town application and the Review of the Alcohol Supply Measures, with around thirty (30) people present. The meeting was addressed by Commissioners, the Mayor and stakeholders and considerable discussion was generated over alcohol induced problems suffered by and in the community. The meeting was advised of the appalling and unacceptable levels of anti social activity, public drunkenness and violence causing community upset and disruption.
- 8) Following this meeting Council asked for consideration of the “Dry” Town application to be deferred pending the finalisation of a community supported Alcohol Management Plan.

- 9) After preparation of a draft Alcohol Management Plan, the application by Council was subsequently re-referred to the Commission for consideration with Council also concurring with a review of the alcohol supply measures, that is the Tennant Creek Liquor Supply Plan of 1 July 2006.
- 10) During the Hearing held on 5 March 2008 a draft Tennant Creek Alcohol Management Plan was tabled (as part of Exhibit 1). This Plan had three (3) broad strategies aimed at strengthening community safety, health and wellbeing by reducing alcohol related consumption and related harm. The Plan contained measures to (Tennant Creek Liquor supply Plan of 1 July 2006).
- Reduce alcohol supply;
 - Reduce harm;
 - Reduce demand.
- 11) The Council application stated *“A ‘‘Dry’’ Town’ is seen as being representative of all three of these strategies as it will add support to initiatives planned for each of the strategies. Primarily, however a ‘‘Dry’’ Town’ is a public order initiative.”*
- 12) Following the Hearing a finalised Tennant Creek Alcohol Management Plan has been submitted to the Commission and the Commission has been informed that this Plan has general stakeholder, community and Northern Territory Government support.

HEARING – 5 March 2008

John Hunter, CEO Tennant Creek Town Council

- 13) Mr Hunter spoke to the application and tabled an updated version of the application (Exhibit 1). He spoke of a need for the application to be in harmony with an overall Alcohol Management Plan for the township. He advised that the initial application was deferred to enable time to be spent on consultations and the preparation of this Alcohol Management Plan which, at the time of hearing was in final draft form.
- 14) He advised that the Council had a ten (10) year old file on drinking problems including a petition, expressing concern over public drinking, signed by sixty (60) people. A more immediate catalyst to the application was Council’s consideration of the “Little Children are Sacred” report and further identification that Tennant Creek had high alcohol consumption levels and suffered severely from alcohol related problems.
- 15) Mr Hunter stated Council was of the unanimous view that a “Dry” Town application for all public areas was needed.

16) The Commission noted that the original draft Alcohol Management Plan had specific inclusions which provided for takeaway sale of low and mid strength beer and bottled wine only. If this draft Plan was followed by the Commission high alcohol products such as full strength beer, spirits, spirit mixes would therefore not be able to be sold at any takeaway outlet. (Note: this Plan was subsequently amended to exclude this specific reference and was submitted to the Commission after Hearing).

Stuart Naylor, BRAADAG

17) Mr Naylor outlined to the Commission various facilities operated by the Barkly Region Alcohol and Drugs Advisory Group (BRAADAG) for the treatment, rehabilitation and post treatment care of people suffering from alcohol addiction. He referred to:

- Twenty (20) bed residential treatment centre;
- Seven (7) treatment units in new or renovated accommodation for those taking back more responsibility in their lives;
- Sobering Up Shelter with capacity for sixteen (16) clients;
- A commitment by the Federal and Territory Governments for a new sobering up shelter with up to twenty-six (26) beds;
- Outreach service capacity for individuals who had undergone various treatment programs. Currently the Outreach service is funded to the level of one (1) person with some indication that to improve capacity of this service, further resourcing may be provided.

18) From Mr Naylor's evidence it was evident to the Commission the important role rehabilitation treatment facilities would play in conjunction with any "Dry" Town or Alcohol Supply Measures and the pivotal role played by BRADAAG in support of alcohol treatment and prevention.

Jeff Warner, General Manager Anyinginyi Health

19) Mr Warner introduced Traditional Owners (Ms Patricia Frank, and Mr Patrick Ahkit) to Hearing Commissioner. The Traditional Owners expressed support for the "Dry" Town but did seek that there be a designated drinking area or areas within the "Dry" Town. If such a designated area was provided Traditional Owners would seek some oversight of the conduct of people while drinking and the installation of facilities to enhance the safety and amenity of the area. The Traditional Owners expressed concern that a "Dry" Town measure, in the absence of a drinking area, would add to the likelihood of people taking alcohol into private homes.

20) Anyinginyu Health supported further supply restrictions including later opening for takeaway. Anyinginyu Health was strongly supportive of the need for ongoing monitoring of the "Dry" Town and any further supply restriction measures and for greater community involvement in establishing and implementing such measures.

Superintendent Bruce Porter / Sergeant Mark Nash

- 21) Police advised that they would not make a formal submission on the “Dry” Town but did raise the issue of Police resourcing should such a measure be introduced. Superintendent Porter advised the Commission that in 2007 there were 4 600 drinkers placed in cells with 7 000 pickups, largely for apparent drunk or disorderly behaviour. Police did not support designated drinking areas or drinking paddocks as sought by the Traditional Owners in their earlier submission.
- 22) In relation to supply measures Superintendent Porter referred Commissioners to the Police Submission presented by Acting Assistant Commissioner Gregory Dowd. This Submission sought reduction in takeaway hours from 2.00pm to 9.00pm, no takeaway on Sundays and for the measures to operate through the Barkly Region.
- 23) There was reference to people purchasing takeaway alcohol at 12.00midday and then coming out at “tea time” to purchase more. Police evidence referred to a recent increase in incident reports and the impacts of the Federal Intervention resulting in people drinking in homes with consequent increase in domestic violence incidents.

Michelle Brown, Chairperson of NT Government Regional Coordination Committee

- 24) Ms Brown provided an outlined of a social and demographic composition of people in the Tennant Creek area. The profile of the Tennant Creek area is:
- A younger population than the National and Territory average;
 - Increasing Indigenous proportion within the population;
 - A high level of social disorder, particularly domestic violence, having a huge impact on children and creating a pathway to problems including impacting on their readiness for school and socialised behaviour to be able to sit in a classroom;
 - Adults not adequately parenting or parenting responsibly due to high alcohol consumption;
 - A lower income base than the rest of the Territory and Australia (average income at \$300.00 per week compared to \$700.00 per week in Darwin);
- 25) Ms Brown outlined her support for the “Dry” Town application but did seek the consequences be addressed, including the potential to move drinking into private homes.

Kevin Diflo, Representing the Community of Elders

- 26) Mr Diflo outlined on behalf of the Community of Elders their increasing recognition that levels of alcohol consumption in Tennant Creek are causing

grave disruption to family life and impacting on the ability of children to forge a productive future for themselves.

Graham Whyte, Licensee / Owner Headframe Bottleshop

27) Mr Whyte was of the view that if “wet” areas were created within a “Dry” Town it would create considerable problems relating to containment of people who had been drinking. He also agreed that a “Dry” Town would add pressure to people in private homes, with friends and relatives wishing to drink at these premises.

28) He advised he would agree with supply restrictions and considered 12.00midday to 7.00pm hours adequate and stated that there should be a ban on cask wine sales after 6.00pm.

Ryan Jenkins, Nominee, Tennant Creek Hotel

29) Mr Jenkins spoke to his written submission and provided support for the application for the Town to be declared “Dry”. He considered that more infrastructure support would be required in conjunction with a “Dry” Town declaration.

30) Mr Jenkins did not support the creation of “wet” areas with the declaration of a “Dry” Town.

31) With regard to supply measures he advised he concurred with any banning of the sale of long neck beer. He advised he considered takeaway hours commencing at 2.00pm to 8.00pm would be appropriate.

32) Mr Jenkins then addressed the Commission on aspects of the draft Tennant Creek Alcohol Management Plan. That Plan sought a ban on the takeaway sale of all full strength beer and spirits and wine not in a bottle. Mr Jenkins expressed the view that implementation of this Plan would introduce sly grog running and other unregulated avenues of alcohol supply into the Township,

33) He opined that further restrictive supply measures were introduced the Commission would need to strictly assess the catchment area to which these new measures were applicable.

34) Mr Jenkins also stated that he supported the introduction of an ID card to enforce supply limitations, ie one (1) cask wine per person per day.

Tony Miles, CEO Julalikari Council

35) Mr Miles put to the Commission that any decisions on “Dry” Towns or supply measures needed to be evidenced based. Any decision needed to be mindful of the likelihood of pushing the Indigenous community into other areas while

drinking. He referred to the lack of outcomes of previous alcohol restriction measures including the 2km law.

36) His evidence outlined that Julalikari Council would not take a position in relation to the “Dry” Town application.

37) Mr Miles made a number of comments in relation alcohol supply measures as follows:

- While passing no judgement on the success or otherwise on the success of Thirsty Thursday it did provide a day of respite for some families;
- Vendors were currently more responsible than previously;
- Supply measures needed to be taken mindful that people can purchase supplies from out of town, including the Chrisco hampers and bulk purchasing through bush orders with Pastoral Agents and other goods suppliers;
- Tennant Creek had a substantial youth drinking problem;
- Complete prohibition does not deal with the problem;
- A lack of town infrastructure and lack of organised recreational activities contributed to problem drinking;
- The draft Tennant Creek Alcohol Management Plan reference to banning full strength beer and other products was “probably unrealistic”;
- The “young men’s cohort” (15 – 24year olds) were most at risk and most vulnerable, with most unemployed.

38) Mr Miles outlined the operations of the Night Patrol with the staffing of eleven (11) persons. Pickups occurred largely between the hours of 6.00pm and 1.00am and he reported that there were between 8 000 – 10 000 pickups in the previous year (2007), almost all alcohol related.

CONSIDERATION OF THE ISSUES

“Dry” Town Application

39) The Tennant Creek Town Council’s submission attached a draft Alcohol Management Plan (now replaced by an amended and widely endorsed final Plan) which has three (3) key goals on reducing supply, reducing harm and reducing demand, all of which are compatible with and are based on the “Dry” Town application succeeding. If this Plan is to be the basis of decision making on alcohol related issues and future strategies to be pursued then the “Dry” Town application approval is critical to its success.

40) The Commission was advised of the general public support for the declaration of a “Dry” Town and at Hearing it received submissions from a number of organisations, almost all of whom were supportive of the application. Consultation and the Public Meeting of 30 October 2007 also provided the Commission with compelling evidence of this support.

- 41) Inherent in this plan is community support for families affected by alcohol with the medium to long term goal of improving public safety, wellbeing and lessening the harmful impacts of alcohol abuse on families who are often the principal victim.
- 42) The Commission accepts professional and widespread advice that rehabilitation services are a key element in implementing the Tennant Creek Alcohol Management Plan and supporting current and any future alcohol restriction measures. It is important for the people of Tennant Creek and the providers of various support services to understand that the "Dry" Town decision is not to be considered in isolation or treated in isolation from associated measures to address alcohol related problems.
- 43) The Commission expects a series of complementary measures or initiatives to follow in support of any "Dry" Town approval and any further takeaway restriction measures.
- 44) The Commission has inspected the alcohol treatment and rehabilitation facilities operated principally through BRADAAG. It has been advised that there will be new and increased capacity of the sobering up shelter to better cater for up to 26 clients, whereas currently the antiquated facility at capacity holds sixteen people overnight.
- 45) The Commission was also advised of residential treatment capacity, outreach services and overall capacity to support individuals who are trying to get off the grog. There is a twenty (20) bed residential treatment centre in Tennant Creek. There are also seven (7) accommodation units under construction or renovation to provide for those taking back more responsibility and under a less intensive oversight program. Outreach services are also available with currently one person employed and indications are that this will be increased.
- 46) Given the evidence of the high levels of public drunkenness and associated anti social behaviour, ongoing resourcing of the night patrol is vital. Evidence provided to the Commission is that this service undertakes 8 000 – 10 000 pickups annually, almost all relating to people who have consumed high levels of alcohol.
- 47) The capacity, functionality and resourcing of all these facilities in the township will be critical in underpinning a "Dry" Town approval and any further alcohol supply measures imposed by the Commission.
- 48) During consultations in 2007 the Commission was advised of protocols to develop short term or transit accommodation for visitors to the township from the outlying Indigenous communities. At the time, one of the town camps was under consideration for siting of this accommodation. The Commission is strongly of the view that such a facility would greatly assist in the success of 'dry' town measures by giving township visitors a managed and secure place to stay, rather than living on the streets or squatting in already overcrowded dwellings. Adequate transit accommodation is the missing element of infrastructure needed to support a 'dry' town declaration.

49) The “Dry” Town will result in greater powers and penalties for the consumption of liquor in public places. This will include:

- Having liquor tipped out as per the current 2km law and the ability to destroy unopened containers of alcohol;
- An on the spot fine of \$100.00 through an infringement notice;
- Court action through the issue of a contravention notice resulting in a fine of up to \$500.00.
- If the alcohol courts are extended to Tennant Creek powers to make prohibition orders and provide the option of rehabilitation or prison for offenders will be incorporated in the range of preventative measures to combat alcohol abuse.

50) In the initial application to the Commission the Tennant Creek Town Council included Mary Ann Dam. This has since been excluded from the application. The Commission understands this was on the basis of public concern that there be available an area for barbecue and recreation use with the consumption of liquor.

51) Council has advised the Commission that should Mary Ann Dam become a refuge for problem drinkers, it would consider applying for that area also to be public restricted. The Commission hopes that this does not eventuate.

52) The Commission was asked to consider the setting aside of a regulated and monitored “drinking area” or “drinking paddock”. Council was not supportive of this proposal and there was no evidence of widespread community support and therefore the proposal is rejected by the Commission.

53) Following careful consideration of all information before it (based on data received, consultations, Public Meeting, written submissions and submissions provided at Hearing) the Commission has determined to approve the application for a Public Restricted Area pursuant to Section 86A of the Act. The “Dry” Town introduction will be on 1 August 2008. This time frame will give adequate notice of the new law to come into effect and provide time for the Department of Justice to mount an information and education program for both the residents of the township and those outlying communities that use the township for retail, health and other community services.

Alcohol Supply Plan

54) The Commission has considered data on alcohol consumption and trends in the Tennant Creek district.

55) Currently in Tennant Creek the alcohol takeaway hours are:

- Monday to Thursday 12:00 hours to 20:00 hours;
- Fridays, Saturday and public holidays 12:00 hours to 21:00 hours;
- Sunday (bottleshops and clubs only) 12:00 hours to 21:00 hours.

56) Evidence provided is that since the abolition of “Thirsty Thursday” the overall alcohol consumption in the township has increased by approximately 8%. While this is a quantum increase it actually indicates that the average daily consumption may have decreased (Fridays to Wednesdays). The abolition of takeaway on “Thirsty Thursday” (14% of the week) has resulted in an 8% consumption increase. Police reported, in consultations in late 2007, that the current seven (7) day trading was making a more even Police load, whereas the “Thirsty Thursday” saw significant peaks in alcohol related incidents on the Wednesday and Friday.

57) One submission to the Commission at Hearing was that it did provide a day of respite for the families of drinkers. Other than this mention there was no call in any of the submissions for the reintroduction of “Thirsty Thursday”. However, the Commission notes that a detailed, independent and evidenced based evaluation of the “Thirsty Thursday” measure is being commissioned by the Northern Territory Government. This evaluation will be critical to any future decisions in relation to alcohol availability in the township.

58) However, by any yardstick alcohol consumption in Tennant Creek is still too high. At a per capita consumption of alcohol (litres of pure alcohol) of over sixteen (16) litres per person, Tennant Creek’s consumption far exceeds that of the national average. The high alcohol consumption combined with alarming figures provided as follows:

- Police evidence of 4,600 drunks placed in cells in 2007 along with 7,000 pickups of intoxicated persons; and
- Julalikari evidence of 8,000 to 10,000 pickups annually;

Indicate an intolerable level of alcohol abuse in the township.

59) Additionally, based on Police data, there is evidence of a current rising rate of alcohol related offences including domestic violence and protective custody apprehensions. These increases are significant.

60) The Commission was supplied social and demographic information on Tennant Creek which clearly establishes it has a low income high welfare dependent township.

61) The success of schooling, employment initiatives and so on in Tennant Creek are closely linked to the level of alcohol misuse in the community, or put another way, are closely linked to the success of programs and measures to prevent alcohol abuse.

62) The final Alcohol Management Plan submitted to the Commission following Hearing includes, under the goal of reducing alcohol supply:

“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.”*

This goal of further reduction of alcohol consumption and the specific targeting of low price high alcohol products is supported.

- 63) The Commission has therefore determined, in conjunction with the “Dry” Town, to impose further restrictions, especially relating to the risk related to products most likely to result in alcohol abuse, ie takeaway, and the takeaway of cask and fortified wine in particular. This will not apply to port which is already permanently banned from takeaway.
- 64) These low cost high alcohol products are considered the major cause of much of the alcohol abuse and resultant violence and anti social behaviour. The Commission would have preferred to ban cask wine entirely in the interest of community safety, but realises alternative products and alternative means of purchasing, possibly unregulated, would develop.
- 65) Alcohol takeaway hours and the need for their reduction was frequently raised at Hearing and during consultations undertaken by the Commission. Cask wine hours of takeaway sale were particularly referenced. While Hearing Commissioners were of a view to reduce takeaway hours and those applying to cask and fortified wine in particular, evidence was not consistent on the best approach to achieve reducing harm caused by excess alcohol consumption and a reduction of the overall level of alcohol consumption.
- 66) Data relating to Alice Springs indicates the recently achieved reductions of alcohol consumption of around 10 % is attributable in part to the reduction on cask and fortified wine sales to later in the day (from 6pm to 9 pm). Anecdotally this has resulted in problem drinkers consuming beer (a lower alcohol product than wine) in the daytime thus leaving them with little money to purchase wine at the 6pm commencement time. The opposing argument mounted for cask wine to be sold earlier in the day is that, with earlier sales, evidence of intoxication would be visible and detectable in the day time, allowing easier enforcement by police. It was put to the Commission that enforcement of public safety is easier when problem drinking and anti-social behaviour occur in the daylight. At night it is harder to detect problem behaviour and ensure public safety. Some regard must be given to this practicality. Accordingly, the Commission has determined to further reduce takeaway hours and minimise the “window” for purchase of cask and fortified wine to two (2) hours per day and for this to be in the middle of the takeaway trading period.
- 67) Takeaway restrictions to be imposed by the Commission will operate for all licensed outlets in Tennant Creek and Threeways.
- 68) There was a submission by the Northern Territory Police to extend any alcohol supply restrictions to the wider Tennant Creek area including Wauchope, Wycliffe Wells, Barkly Homestead, Renner Springs etc. The

Commission has not determined to extend the measures this far, but if advised that problem drinkers are travelling to these locations to obtain alcohol when not available in Tennant Creek, it would reconsider the geographic coverage of these measures.

DECISION

“Dry” Town Application

69)The application as applied for is approved under Section 86A of the Act. The area approved for Public Restricted Status is the entire Municipal Boundary in effect of the date of Hearing, that is 5 March 2008. It excludes NT Portion 1744 held by the Tennant Creek Town Council as the Registered Proprietor of Perpetual Lease Number 164, commonly referred to as Mary Ann Dam. This approval will take effect from 1 August 2008 and be declared by Gazette Notice with comprehensive description of the area.

Alcohol Supply Plan

70)All the existing on premises sales and conditions in Tennant Creek and Threeways remain.

71)Takeaway hours for Tennant Creek and Threeways from 1 August 2008 will be 2.00pm to 8.00pm Monday to Friday, 12.00midday to 8.00pm Saturdays and Public Holidays, 2.00pm to 8.00pm on Sundays, for clubs and hotels only. No trading Good Friday or Christmas Day

72)From 1 August 2008 in Tennant Creek and Threeways all cask wine, fortified wines and Stones Green Ginger wine to only be sold from 4.00pm to 6.00pm, with only one (1) bottle or one (1) cask of these products can be sold per person per day.

73)From 1 August 2008, in Tennant Creek and Threeways 750ml and 800ml beer bottles (long necks) are unable to be sold.

74)All other existing conditions relating to takeaway alcohol sales remain.

75)All Licensees in Tennant Creek and at Threeways will be notified of this decision. If voluntary agreement is not reached over implementation (through their incorporation in liquor licence conditions), a formal Hearing will be convened in accordance with the *liquor act* to determine such liquor trading conditions.

Richard O’Sullivan
CHAIRMAN
15 May 2008