

Northern Territory Licensing Commission

Further Reasons for Decision

Premises:	Tennant Creek Hotel
Proceeding:	Complaints pursuant to Section 48
Complainants:	Mr Chris McIntyre, Licensing Inspector Sergeant Steve Eddington, Northern Territory Police
Date of Hearing:	24 October 2000
Date of Original Decision:	25 October 2000
Date of publication of this decision:	08 February 2001
Heard Before:	Mr John Withnall (Presiding) Mr Brian Rees (Member) Ms Mary Ridsdale (Member)
Appearances:	Mr Greg Targett, for Licensee Mr John Stirk, Counsel Assisting the Commission

In our Reasons for Decision in this matter on 25 October 2000, after dealing with the complaints at hand we raised with the licensee the standing of the Shaft within the framework of the Tennant Creek restrictions to be able to open on Thursdays. For the completeness of this record we reproduce the relevant part of that decision:

“There is a further issue we see as having arisen from your having told us that the Shaft is normally only open on Thursdays. Your licence encompasses the Shaft being open seven days a week, and while of course this is not obligatory, it must be obvious to all in Tennant Creek why you have chosen to only open on Thursdays. Such an initiative is surely designed to catch that element of the Thursday trade which has otherwise been excluded from front bars.

The Commission is therefore considering amending the conditions of your licence to reflect our view that the Shaft should be seen to be a front bar in relation to its Thursday operation.

On 15 January 1999 the Commission published a warning for you in this regard, as part of its decision on the 1998 review of the Tennant Creek restrictions. The relevant part of that decision is as follows:

The Commission will continue to monitor the trading practices that are applied or allowed by the licensee of the Shaft Nightclub.

A previous owner of the “Tennant Creek Hotel” modified his premises so that the nightclub opened onto the front street.

It is the view of the Commission that the word or term “front” in relation to a bar is not exclusively a matter of location but can be a descriptor of a particular manner of trade, a set of licence conditions or even a derogatory description of the premises.

Indeed, the same conditions or manner of trade or derogatory perceptions could be applied with equal effect and or relevance to a so-called “back bar”.

In the Commission's view, the determining factors are the licence conditions prescribed for a particular bar or premises and the manner in which the premises are conducted in relation to those conditions.

The Shaft Nightclub is required to trade in accordance with the licence conditions applicable to lounge bars as distinct from front bars. The Police and Commission Inspectors will continue to monitor trading practices in the Nightclub in accordance with their standard procedures.

We emphasise this previously published guideline for determining what is to be deemed to be a front bar for the purpose of the restrictions, and it's specific reference to the Shaft. What is to be looked at is the actual manner of operation in the light of the prescribed licence conditions.

It seems clear from what you put to us that apart from the irregular function or entertainment event, the Shaft does not open for regular trade other than on Thursdays. That is, although it is able to trade as a lounge or "back" bar seven days and nights a week, it does not; it's only regular opening day is Thursday. The Commission is of the preliminary view that a bar that is open to the main street of Tennant Creek and trades **only** on Thursdays cannot claim to be a lounge bar with that operation. There is no normal lounge bar trading pattern of the Shaft with which to compare the Thursday operation.

We appreciate that the raising of this issue at this particular time takes the licensee by surprise. You have not had the opportunity to consider your position in this regard, and of course you must be given a reasonable opportunity to be heard, to put to us any relevant matter you see fit. What we therefore propose to do is to adjourn further consideration of this matter pursuant to section 49(4)(c) of the Liquor Act to a date to be fixed after 30th November 2000. Up until 30th November 2000 we will accept from or on behalf of the licensee any written submission you wish to put before us on the issue of the operation of the Shaft.

For instance, you may wish to submit that this issue should be left to the forthcoming further general review of the Tennant Creek restrictions, or you may have operational plans for the Shaft which are presently unknown to us. Again, you may advise us that you wish to be further heard in person or to call evidence at a continuation of the hearing. Whatever you have to say to us as to the further course of this matter, it must be in by 30th November 2000.

Should you overlook the matter, or choose to make no submission, then after 30th November you will be at risk of having this present hearing panel of the Commission amend the conditions of the licence, pursuant to section 49(4)(a) of the Act, to reflect the actuality of the operation of the Shaft.

you have until the end of November to show cause why the Commission should not amend your licence conditions to prevent the Shaft from trading on Thursdays. You are entitled to be fully heard on this issue, but if you wish to be further heard you will need to advise us to that effect by 30th November 2000".

The hearing was adjourned on the foregoing basis.

On 1st December 2000 we received a faxed submission from the licensee dated 30 November 2000. This followed a telephoned reminder from the office of the Commission as to the imminency of the imposed deadline.

A further hearing was not requested.

The Commission has carefully considered the matters raised in the written submission, but remains of the view that in opening as a bar *only* on Thursdays the Shaft is not operating within the letter, spirit or intent of the Thursday restrictions in Tennant Creek. There is admittedly a groundswell of opinion that the restrictions are no longer very effective and are in need of review,

but for the time being they remain in place as the touchstone for Tennant Creek liquor trading. Indeed, it may be that the Shaft itself is one of the major factors in any ineffectiveness of the "Thirsty Thursday" concept in providing a day's respite for the town as originally envisaged.

In resistance to the Shaft being designated a front bar in Tennant Creek, the licensee emphasises that the Shaft Nightclub is used for purposes other than as a bar on Thursdays, such as for weddings (two in two years), High School formals (three in three years), "theme" nights for bus tours, aerobics classes and occasional concerts by visiting bands. This to our minds only serves to highlight its lack of use as a bar. Except only for Thursdays, it is used as a function room/entertainment venue. The point being made by the Commission on 25 October 2000, and not satisfactorily addressed by the licensee, is that the Shaft opens directly on to the front street when in use as a "lounge bar" on Thursdays, (its front entrance being set back only a few metres from the footpath), so it has to look to its regular trading patterns to establish its operation as a genuine lounge bar before it can qualify to open on Thursdays. *It cannot qualify as a lounge bar able to open on Thursdays for the reason only that it claims to trade as a lounge bar on Thursdays.*

We note that the Shaft is referred to as a "Nightclub" throughout the licensee's written submission, which tends to highlight a degree of opportunism in opening as a bar only at noon on Thursdays in the prevailing liquor environment in Tennant Creek.

The licensee has confirmed that the Shaft does not currently trade as a regular bar of any description except on Thursdays, at which times public access is direct from the front footpath. On the one day a week it opens as a bar it appears to have all the attributes of a front bar. The Commission therefore proposes to restrict the Shaft from opening on Thursdays for so long as the current Tennant Creek restrictions endure.

This is no reflection on the licensee's corporate citizenship, nor is it by way of being any penalty for anything. It is a consequence of the evidence at the hearing pointing to an inequitable anomaly within the intended operation of the Tennant Creek restrictions. The Commission has the duty to administer the Liquor Act and the Tennant Creek restrictions fairly and even-handedly. The licensee will be aware that another liquor outlet in Tennant Creek also recently had its conditions varied in relation to Thursday trading to remove an obvious anomaly.

We are of course concerned that the licensee tells us that taking the Shaft's Thursday trading away "would probably send us broke", but the hotel's viability surely cannot be seen to depend on so deliberately targetting a market consisting almost wholly of Aboriginal persons seeking to circumvent the Thursday restrictions. We are told that the hotel's survival depends on continuing to take advantage of the Thursday restrictions in this way, yet such a plea sits rather inconsistently with the licensee's announced intention of converting the Shaft into a bottleshop in the near future.

The Commission made it clear two years ago that the Shaft would need to operate as a regular lounge bar rather than as a front bar. Our current disapproval of its trading pattern can hardly be a surprise to the licensee in the light of that published warning as to the "manner of trade". The Shaft "Nightclub's" pattern of trade is such that we are satisfied that on the only occasions it opens as a bar at all, it's operation is that of a front bar.

Pursuant to section 49(4)(a) of the Liquor Act, the conditions of the licence of the Tennant Creek Hotel will be varied by removing the permission for the Shaft to trade on Thursdays. No other change is effected. The new trading regime will take effect as from 23 February 2001.

The licensee should note that although open-ended, the restriction on the Shaft should not necessarily be thought to be permanent. Firstly, its operation will necessarily be reconsidered as part of the forthcoming review of the Tennant Creek restrictions in relation to which the nominee Mr Targett will have had significant input as a member of the Tennant Creek "Beat the Grog" Committee, and secondly, the licensee remains at liberty to apply to the Commission at any time for approval of such new or revised trading plan for the Shaft as the licensee may see fit to put up. Every application must be considered on its merits.

John Withnall
Presiding Member

20 Feb 2001