

A/Deputy Director-General (Operations)

Decision Notice

Matter:	Application for the grant of a liquor licence
Premises:	Driver Supermarket
Applicant:	Mr Dallas Mackay, Director – Laddmac Pty Ltd
Proposed Licensee:	Laddmac Pty Ltd
Objectors:	Department of Health, City of Palmerston, Mr Wayne Zerbe and Mr and Mrs Winchester
Legislation:	<i>Liquor Act</i> – section 32A
Decision of:	A/Deputy Director-General (Operations)
Date of Decision:	21 August 2016

Background

1. Pursuant to section 32A of the *Liquor Act* (the Act), Mr Dallas Mackay, Director of Laddmac Pty Ltd the owner and operator of the Driver Supermarket, Driver Avenue, Driver applied to the Director-General for the granting of a liquor licence at the supermarket. The applicant sought a “Store” licence to allow for the sale and supply of liquor for consumption away from the premises.
 2. There is a significant amount of history in relation to these premises, the applicant and liquor sales. Whilst not directly related to the current application the history is of some relevance as to context and considerations.
 3. The premises were licensed to sell liquor between 1984 and 1999 under an unrelated licensee. As the result of a fire at the premises on 12 April 1999, the premises ceased to operate and sell liquor.
 4. Trade recommenced in July 2002 at which time Laddmac Pty Ltd leased the premises, later applying for a liquor licence in October of that year. That application was withdrawn the following September quickly followed by a second application in October 2003.
 5. The applicant also took control of the Gray Supermarket at around the same time in 2002. Gray Supermarket is licensed to sell liquor for consumption away from the premises and remains the licensee to the present day.
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6. Following significant Licensing Commission hearings of the application and objections the second application was refused on 19 December 2005.
7. The reason for the refusal was:

Decision

124. The decision of the Commission has been made considering the totality of the evidence presented and the requirements of Section 32 of the Liquor Act in particular. Further it is mindful that the onus of proof is on the Applicant to demonstrate on the balance of probabilities a liquor licence is required to be issued.
125. The Applicant has failed to do so and the application is dismissed on the grounds the Commission does not believe the granting a licence to Laddmac Pty Ltd for the Driver Supermarket is required, justified, necessary, desirable or warranted.

Current Situation

8. This application was originally submitted for consideration on 24 November 2015. This lodgement was deficient and the applicant was advised of the materials which were required before it could be considered.
9. On 3 May 2016 the remaining documents were received from the applicant.
10. The application was advertised in the prescribed manner on 1 June and 3 June 2016 and with a sign erected at the premises for the duration of the objection period being 30 days from 3 June 2016.
11. For completeness a new lease was entered into by Laddmac Pty Ltd and the owners Lay Properties Pty Ltd on 16 October 2015; the lease allows for the sale of liquor from the premises.
12. The application was sent to the City of Palmerston for their comments who objected. Objections were also received from the Department of Health, Mr Wayne Zerbe and Mr and Mrs Winchester, local residents. Police were also advised of the application as they fall within the class of persons entitled to lodge an objection.
13. No response was provided by Police in relation to this application.

Assessment of the matter

14. In total there were four (4) objectors to this application:
 - Department of Health
 - City of Palmerston
 - Mr Wayne Zerbe
 - Mr and Mrs Winchester

Department of Health

15. An objection was lodged by Ms Sandra Schmidt, Acting Director, Alcohol and Other Drugs Services from the Department of Health. It is well established the Department of Health falls within the group of persons entitled to lodge an objection pursuant to Section 47F of the Act.
16. Ms Schmidt's objection was statistical in nature and focused on the harms and incidents in the Northern Territory as a whole as well as from a National level. This data was not refuted by the applicant and may be accepted as painting a picture for the Northern Territory and the National in relation to alcohol related harms whilst not being suburb specific.
17. There was no material submitted specific to the local area or countering the material supplied by the applicant. The objector stated "...high outlet densities were associated with a higher rate of assault, self-reported injuries" and the like. It was submitted "...establishing more premises licensed to sell takeaway alcohol will not diminish the problems".

City of Palmerston

18. The Act requires applications of this nature to be sent to "...the CEO of the council" if the premises falls within "...a shire council or a regional council". Palmerston was designated a city in 2000 and therefore the requirement of Section 27(3) is not enlivened.
19. Despite this the Council falls within the category or persons prescribed in Section 47F(3)(e) and is therefore entitled to lodge an objection.
20. The objection of Council submitted "...the locality is serviced by a number of outlets within 1.5km (via road) along with a greater density of outlets within 2kms from the subject site".
21. The objection included a submission the premises was within close proximity of sensitive land use areas such as schools and parks, suggesting;

 "...the location of takeaway outlets near public open space have seen an increase of public itinerancy and public drinking... This issue is evident at the existing Gray shopping centre takeaway outlet where itinerancy in the nearby open space is a reoccurring problem".
22. The objector further submitted National figures relating to alcohol related harms from the consumption of liquor whilst not specifically providing evidence of Driver specific figures.

23. The objector did however also submit "...the ranking for the two adjacent suburbs of Gray and Moulden" in the list of "most disadvantaged" suburbs supports the submission "...further takeaway outlets will only compound the documented negative impact this will have on the local community".

Mr Scott and Mrs Katherine Winchester

24. Mr and Mrs Winchester reside at 9 Burnett Court, Driver which is a short distance from the Driver Supermarket.
25. As residents they also fall within the category of persons entitled to lodge an objection.
26. Their objection provides a consistent theme amongst the objectors in that "...there is no evidence to support the need of an additional outlet, there are several outlets in the area already".
27. Further, they submit;

"There are numerous takeaway outlets already within the area within walking and driving distance and there is no evidence of community need for an additional alcohol takeaway outlet in this area. There is plenty of convenience, competition and choice for alcohol purchases from driver (sic) residents."

28. The objector also submits there are school nearby and children use the existing shop to purchase their goods such as lollies and the like.
29. The objector also submitted there was a high level of alcohol related anti-social behaviour in the local area, violence and yelling which is exacerbated by the provision of alcohol.
30. Whilst objecting to the application it was submitted the objectors are regular customers of the supermarket and were highly complimentary of the service and manner in which the premises are presently operated. Their objection centred on whether a need existed for the sale of liquor.

Mr Wayne Zerbe

31. Mr Zerbe is a resident of 11 Burnett Court, Driver and as a resident falls within the category of persons entitled to lodge an objection to this application.

32. The objection was simple in nature:

"My reasons are:

- It is next to a primary school.
- Antisocial behaviour is already out of control in this area.
- The proponent already has such a facility five minutes (sic) walk away.
- PALMERSON already has many liquor outlets with several more to come on screen"

33. Again a common thread of the objections being the prevalence of existing premises in close proximity.

Response by applicant

34. Mr Mackay responded to the objections rejecting the issues of nearby schools being a deciding factor. Mr Mackay noted there were no objections from the schools mentioned by the objectors and submitted they had been fully transparent during the application process and they "...would not be exposing the local community to anything they are unfamiliar with".

35. The applicant does not step away from the fact there are a number of outlets in the Palmerston area stating with "...the rapid expansion of Palmerston additional outlets have come to life to ease the pressures on shopping centres within the Palmerston area". Mr Mackay submits the granting of the licence will not attract additional people to the supermarket; it will simply afford existing customers a greater convenience.

36. He describes the provision of that convenience "...the option of not having to travel out of their region to acquire their needs. A service all other stores this size or similar have to accommodate their clients".

37. Mr Mackay supports the application by addressing any concerns over anti-social behaviour by the example of his current licence which has been operated without blemish since 2002. Mr Mackay submits "...strong management...will be ready to uphold all aspects of the responsible sale of liquor. Our staff have all had many years of experience in the industry".

38. He further submits they have adopted many useful ways of dealing with the issues and utilises communication and point of sale messaging to reinforce the rules as well as being active members of the Liquor Stores Association of the Northern Territory.

39. The complex in which the supermarket is located is undergoing upgrading and improvements which are "...near completion and has revitalised the complex with a great new look". Mr Mackay submits if the licence is approved they will seek to alter the premises to segregate the liquor area from the general groceries section.
40. Mr Mackay refuted suggestions the area is significantly disadvantaged and quotes statistics attributed to Commander Brent Warren which point to improved crime statistics in the area in recent years.
41. Mr Mackay submits in the event the licence is granted they will affiliate with "Bottlemart" in keeping with the existing relationship with the Gray Supermarket. This is designed to give "...our store opportunity (to) advertise with the ability to provide a great range of convenient priced liquor to the local consumer".
42. They propose a standard range of products such as beer, wine and ready-to-drink options and will exclude some promotional products if they are deemed inappropriate by management.
43. The current operating hours are between 07:00 and 19:00 each day except for Christmas Day. If the licence is granted the premises will extend their trading hours to 21:00 hours. Whilst not expressed it may be accepted liquor would not be sold on Christmas Day or Good Friday in keeping with all other similar licences.
44. The applicant acknowledges selling "...liquor comes with a great responsibility to community, customers and staff" and in response has installed CCTV surveillance which would be a standard requirement of any takeaway sales.
45. The applicant hopes to attract new clientele with fuel discount promotions through purchasing at the premises as well as other fast food outlets.
46. The applicant submits "... (consumers) in the Territory expect to have the simple convenience of purchasing their weekly basket at their local store which would include there (sic) choice of an alcoholic beverage as well as other items".
47. As written earlier the applicant is an active member of the Liquor Stores Association of the Northern Territory and has operated a similar licence without incident since 2002. It is this history which Mr Mackay submits places them as an appropriate and experienced applicant for a liquor licence at the Driver Supermarket.
48. It is clear the applicant has demonstrated their ability to operate licensed premises of this nature through the example set at Gray Supermarket. This is accepted and has not been refuted by any party.

Assessment of Objections

49. An assessment of the objections aligns them with previous applications that have been considered by the Director-General. These indicate a major concern of objectors is a potential degradation of the amenity of the neighbourhood and a negative impact on public safety and social conditions in the community.
50. The objections expressed concern that the grant of a liquor licence would result in itinerants loitering in the area, along with an increase in anti-social or criminal behaviour.
51. Such submissions have not been supported by primary evidence and may be considered speculative at this time. However, the concerns raised must be considered as this type of anti-social behaviour is often an unintended consequence flowing from store licensed premises, regardless of the best intentions of the licensee.
52. In saying that, to prove that any particular licensed takeaway premises is responsible for all anti-social or criminal behaviour in that area is an assumption, as it is difficult to prove without investigation that any person's anti-social or criminal behaviour, at any given place can be attributed to the nearest licensed premises.
53. Another concern expressed by some objectors is the proximity of the premises to schools and recreational facilities. The objectors simply state that such an outcome is simply inappropriate and the negative impact will arise from the exposure of children to the sale and supply of liquor.

Consideration Criteria

54. In considering the application the Act requires me to consider any objection to the application and any reply provided by the applicant.
55. I have considered the objections and the response by the licensee.

Summary

56. The applicant has provided a detailed application which meets the requirements prescribed in the Act. The applicant submits that the application falls within the parameters of the takeaway licence guidelines issued by the former Licensing Commission in December 2014.
57. It has been submitted Driver "...has experienced a population growth as a result of the affordable housing development which is situated in the heart of the suburb" and that with the previous lack of development in the area the suburb has experienced a considerable population increase in a very short period of time.

58. The applicant submits the application demonstrates a very clearly established need for a takeaway licence. It is submitted the "...need for the small suburban grocery store extends far and wide".
59. The applicant submits their discussions with customers "...have revealed some facts about customer movements and reasons why". It has been submitted that over time "...customers have changed their shopping habits away from driver Supermarket in the need for a one stop location" and their former customers now "...do the long drive down the bottom end of Palmerston to the Moulden Supermarket where they may purchase their alcohol with their shopping".
60. It is submitted these people are residents of Driver, Moulden and Marlow's Lagoon.
61. Mr Mackay submits there is a "...very clear need for these people affected...to have the convenience of purchasing the alcohol and groceries on the way home from work, on a route that is convenient and close rather than transiting to and from other further locations unnecessarily".
62. It is further submitted the topic "...has reached a point...of social equality" suggesting Driver residents presently are disadvantaged and treated inequitably when it comes to access to liquor.
63. Mr Mackay provides no substantive material in support of these submissions and given the Licensing Commission held in 2005 when they refused an earlier application, "...there are within approximately a two (2) kilometre radius of the Driver Supermarket, nine (9) liquor outlets where liquor can be purchased" such a submission struggles to be accepted as correct.
64. This accords with the submissions of the objectors who all state there is no shortage of access to takeaway liquor in the nearby area, noting such submissions are also anecdotal in nature.
65. Objectors also expressed concerns regarding itinerants and persons engaging in anti-social behaviour. This is a community problem that occurs throughout the Northern Territory and there is no evidence to suggest this can attributed to one particular licensed take away outlet.
66. Such matters are compliance or enforcement issues as there are laws and regulations that govern and prohibit public drinking within 2 kilometres of licensed premises and the enforcement of those laws is designed to prevent the types of anti-social behaviour the objectors speculate will occur. Whilst such speculation is not fanciful given the reality of the prevalence of alcohol related issues in the Northern Territory, they cannot be the basis for refusing to issue liquor licenses in appropriate circumstances.

67. The issues surrounding public drunkenness and anti-social behaviour are fully recognised and acknowledged. However, such concerns are widespread throughout the Northern Territory. If the potential for anti-social behaviour to occur near licensed premise was to be considered an absolute bar to any new licences being issued then the Director-General would be unable to comply with at least one of the prescribed objects of the Act, namely to facilitate a diversity of licensed premises and associated services for the benefit of the community.
68. The applicant has submitted there has been a dramatic increase in the population of the area and Driver itself. The Australian Bureau of Statistics confirms the Palmerston South area has experienced a greater than 22% population growth from 2014 to 2015. The Bureau referred to Palmerston itself as well as Rosebery and Bellamack, newly developed suburbs as leading this growth.
69. In the absence of primary evidence such submissions as to the growth in population do not accurately reflect the situation in Driver which is a well-established area.

CONSIDERATION OF THE TAKEAWAY GUIDELINE CRITERIA:

70. In December 2014 the former Northern Territory Licensing Commission lifted the moratorium on takeaway liquor licences that had been in place since 2006, with new applications being considered subject to the following guidelines:
- A takeaway liquor licence in a new residential development; or
 - A takeaway liquor licence to be located in an area that has had recent, substantial population increase: or
 - A takeaway liquor licence for a producer of liquor products that enables the licensee to sell as takeaway only the liquor products at the location; or
 - A takeaway liquor licence for a location where there is a very clearly established public need.
71. Other matters such as public interest and *Liquor Act* requirements must also be taken into consideration along with the following:
- The density of takeaway liquor venues in the vicinity of the proposed application;
 - The proposed business model; and
 - The propensity for alcohol-related anti-social behaviour and harm in the vicinity of the proposed application.
72. On consideration of the above, Driver is not a new residential development and the applicant is not a producer of liquor products and therefore is unable to satisfy those criteria.
73. The applicant seeks to rely predominately on the fourth criterion, that of a very clearly establish public need and to a lesser degree on the "...recent, substantial population increase".

74. Whilst it may be accepted there has been an increase by the additional housing under the affordable housing scheme in Driver, this is not considered “substantial” when compared to those accepted in other decisions such as a Bellamack and Rosebery.
75. Accordingly the remaining consideration is whether the applicant has established a “...very clearly established public need”.
76. The other matters for consideration such as density of premises, the proposed business model and the propensity for anti-social behaviour must also be considered.
77. The density of licensed premises is a matter previously found by the Licensing Commission to be a reason to refuse the issuing of a licence to the applicant. Whilst guidance may be drawn from such a decision, each application must be determined on its merits and subsequent decision makers are not bound to make like decisions.
78. There are now 15 licensed premises in the Palmerston area which are able to sell takeaway liquor. This number has increased from 11 in 2014 when the Director-General considered an application by the Rosebery IGA for a similar licence.
79. In that matter the Director-General held the population of Rosebery has increased significantly:
74. On those statistics alone there is no doubt that the suburb of Rosebery falls within the guideline criteria of being located in an area that has had recent, substantial population increase. In fact, it was for applications of the type and location of the Rosebery IGA application that the moratorium on the issue of take away liquor licences was relaxed and the above guidelines promulgated.
80. Accordingly it was found the application met the requirements and was able to establish that application satisfied “...at least one of the criteria set out in the guidelines promulgated by the former Licensing Commission for the grant of a takeaway liquor licence, namely, that the licence is to be located in an area that has experienced substantial and recent population increase”.
81. Distinguishing that matter from the present consideration is the fact I am not satisfied there has been a similar growth, or one sufficient to meet the threshold of “substantial” when given its natural meaning in the Driver area.
82. The applicant has provided a thorough business plan and has demonstrated through their operation of the nearby Gray Supermarket, a level of experience and acumen that would satisfy any consideration as to their abilities and suitability.

83. I have also earlier discussed the potential for the propensity of anti-social behaviour in this area and I do not consider this to be a fatal consideration to this application.
84. The various objections, including the genuine motives of the objectors to the application are acknowledged and considered above in some detail. In summary, and on the basis of the reasoning set out including the speculative nature of the grounds of the objections, I find that none of the objections are of sufficient weight to persuade me to refuse to grant the licence.
85. The remaining consideration is the "...very clearly established public need".
86. I am not satisfied on the materials provided by the applicant that they have been able to establish a need that is presently not being met through the nearby premises. It is undoubtable there is a commercial need or desire by the applicant however such considerations are of lesser import in these deliberations.

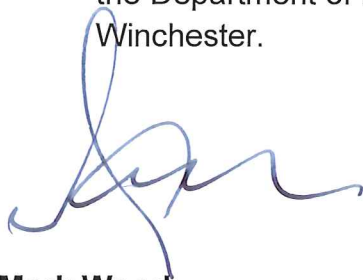
Decision

87. In accordance with section 29(1)(a) of the Act and on the basis of the information provided in respect of the application, and for the reasons set out above, I refuse the issue of a Store Liquor Licence to Laddmac Pty Ltd for the purpose of conducting a takeaway liquor business, in conjunction with the operation of a supermarket, for the premises known as the Driver Supermarket, Shop 4, Lot 1400 Driver Avenue, Driver in the Northern Territory.

Review of Decision

88. Section 8 of the *Licensing (Director-General) Act* prescribes a delegate decision is a decision, under any Act, of the Director-General that is made by a delegate of the Director-General. The Director-General delegated the determination of applications made under Section 29(1)(a) of the *Liquor Act* by instrument to the person from time to time holding, acting in or performing the duties of the position in the Department of Business specified in Schedule 2 of that instrument. This decision was made by a person referred to in that schedule. Section 10 of the *Licensing (Director-General) Act* provides that an affected person for a delegate decision may apply to the Director-General for a review of the decision. This application for review must be made within 28 days after written notice of the delegate decision is given to the affected person, or within any additional time that the Director-General allows. Section 9 of the *Licensing (Director-General) Act* prescribes an affected person for a delegate decision to be the applicant for the special licence and a person who made a submission, complaint or objection (however described) during the process that resulted in the decision being made.

89. Accordingly, the affected persons in relation to this decision are, Laddmac Pty Ltd, the Department of Health, City of Palmerston, Mr Wayne Zerbe and Mr and Mrs Winchester.



Mark Wood
A/Deputy Director-General (Operations)
21 August 2016