



Director-General of Licensing

Decision Notice

Matter:	Application for the grant of a liquor licence
Proposed Premises:	Flynn Tavern 127 Flynn Circuit Bellamack, NT.
Applicant:	Armada Hotels and Leisure Pty Ltd
Proposed Nominee:	Mr David Stanley Anthony
Objectors:	Mr Ken Davies, CEO Department of Education Mr Mark Spangler, Director Technical Services, City of Palmerston Mr Mike Harvey Ms Caron and Mr Liam Banks Mrs Joanna Taylor Hon Peter Chandler MLA, Minister for Education
Legislation:	Parts III and IV of the <i>Liquor Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	13 April 2016

Background

1. Pursuant to section 26 of the *Liquor Act* (the Act), Mr David Stanley Anthony, Director of Armada Hotels and Leisure Pty Ltd ("the Applicant"), applied to the Director-General of Licensing ("the Director-General") for the grant of a Tavern Licence with authorisation for takeaway liquor sales. The Flynn Tavern ("the Tavern") is currently under construction and, if the liquor licence is granted, will be located at 127 Flynn Circuit, Bellamack Northern Territory.
2. Mr Anthony has provided a detailed application in which he has provided information relating to the relevant criteria referred to in section 6(2) of the Act. Mr Anthony has provided an affidavit pursuant to section 26A of the Act, identifying that he is the sole Director of the Applicant company and will be the only person who will benefit from the profits of the company.
3. The proposed premises are to be located at 127 Flynn Circuit, Bellamack, a large block of land bordered by Chung Wah Terrace, Forrest Parade and Flynn Circuit in the City of Palmerston.

4. The application is for a Tavern Licence with facilities for a takeaway liquor licence, family bistro, alfresco dining area, sports bar, gaming room (subject to the grant of a gaming machine licence) and children's play area, with entertainment by live performers available on selected nights. Mr Anthony has provided copies of the Tavern's Business Plan, Risk Assessment Management Plan and Noise Abatement Plans as well as a summary of the Community Consultation Survey conducted on behalf of the Applicant.
5. Proposed trading hours for the sale of liquor and consumption of liquor on the licensed premise are from Monday to Sunday (seven days per week) from 10:00 hours to 23:59 hours with no trading Good Friday or Christmas Day. Proposed trading hours for the sale of takeaway liquor are Sunday to Friday from 10:00 hours to 22:00 hours, Saturday and Public Holidays from 09:00 hours to 22:00 hours with no trading on Good Friday or Christmas Day.

Advertising

6. The application was advertised in the Northern Territory News on 12 August and 14 August 2015. The objection period expired on 13 September 2015. The notice advising of the application for a liquor licence was displayed at the proposed premises for the required period.

Objections

7. A total of seven objections were received, six within the objection period and one accepted into the office by the Director-General after the objection period had expired. One of the objections was deemed invalid on the grounds the objector does not reside in the neighbourhood to which the application relates.
8. There were a total of six valid objectors, being
 - Mr Ken Davies, Chief Executive Officer, Department of Education;
 - Mr Mark Spangler, Director Technical Services, City of Palmerston;
 - Mr Mike Harvey;
 - Ms Caron and Mr Liam Banks;
 - Mrs Joanna Taylor; and
 - Hon Peter Chandler MLA, Minister for Education.

Objection by Mr Ken Davies, Chief Executive Officer (CEO), Department of Education

9. Mr Davies objects in his capacity as CEO for the Department of Education and on behalf of the future school council for a new "special school" to be constructed in the area. Mr Davies claims that the grant of a takeaway licence is likely to adversely affect the health, education, public safety and social conditions of the special school and school community.
10. Lot 10284, Town of Palmerston has been set aside by the Northern Territory Government for the construction of a school for students with high support needs. The school will open in January 2017 and is adjacent to the proposed Flynn Tavern site. Mr Davies has advised that at present there is no school council or parent community in place to speak on behalf of the special school.
11. Mr Davies raises concerns that the granting of a take-away licence may adversely affect students and the school community stating there is a high risk that the playground environment along Flynn Circuit and Forrest Parade will be compromised and children will be exposed to antisocial behaviour ordinarily associated with a takeaway liquor outlet.

12. There is also a potential childcare facility intended for children with special needs to be constructed in close proximity to the proposed Tavern. Mr Davies is concerned with safety issues associated with traffic congestion challenges, for both the school and the future childcare service as there will also be 70 serviced apartments proposed for construction in the vicinity. Mr Davies also raises concerns regarding an increase in visitors frequenting the area with the potential for increased vandalism around the school, resulting in harm to the students and the school environment.
13. Mr Davies submits that the application for the takeaway liquor licence should be refused on the grounds that the proposed Tavern's proximity to the special school is likely to adversely affect the school and the school community.

Response to the objection

14. Mr Graeme Buckley, Partner with HWL Ebsworth Lawyers, responded to the objection on behalf of the Applicant. Mr Buckley submits that the suitability of the land use for the development of a tavern and the compatibility of the development with the nearby special school is a matter for the Palmerston Development Consent Authority.
15. In relation to the claim a takeaway liquor outlet will heighten the risk of increased vandalism at the special school, Mr Buckley states this is based on conjecture unsupported by facts. He notes that there are many examples of licensed facilities not being a causative factor for the concerns raised by Mr Davies.

Assessment of objection

16. Mr Davies objection is valid in terms of the requirements of the Act. Mr Davies concerns that the proposed location of the takeaway liquor outlet premises will be in close proximity to a school for special needs students and a potential special needs childcare facility, are validly raised and worthy of consideration.
17. Whilst Mr Davies concerns are noted it must also be taken into account that there are many takeaway liquor outlets throughout the Northern Territory, including within Palmerston, which do not result in antisocial behaviour and vandalism in the immediate vicinity of the premises.
18. In regards to the concerns of traffic congestion and road safety, it must be taken into account that an increase in traffic in the neighbourhood is inevitable with any new suburb. For Bellamack it is obvious that an increase in traffic will be a natural consequence of the on-going residential development and the attraction of other businesses to the commercial precinct of the neighbourhood. No doubt there will be an increase in traffic in the immediate vicinity of the Tavern should the liquor licence be granted. However, the same situation will occur for any new business established in the locality, including planned professional services, retail outlets and other businesses. An increase in traffic in Bellamack as the suburb continues to develop is inevitable, regardless of whether or not the operation of the Tavern is approved.

Objection of Mr Mark Spangler, Director Technical Services, City of Palmerston

19. Mr Spangler advised that Council objects to the granting of a liquor licence on the grounds that the proposed license has the potential to negatively impact on the amenity of the neighbourhood where the Tavern will be located and also cause detriment to the health, education, public safety or social conditions.
20. Mr Spangler further submits that Council objects on the basis that a valid Planning Approval for a Tavern has not been obtained.

Response to Objection

21. Mr Buckley responded on behalf of the Applicant stating that no facts have been included to support the grounds of objection raised by Mr Spangler. In response to the objection on the basis of there being no planning approval for the development, Mr Buckley states that section 26(2) of the Act allows applicants to apply for liquor licences for premises yet to be constructed without having to expend capital in commencing the development process by engaging engineers and the like.

Assessment of Objection

22. The City of Palmerston has standing to lodge an objection under section 47F(2) of the Act. The objector marginally meets the criteria set out in Section 47F(3) of the Act in reiterating the grounds for objection prescribed without providing any additional information as to how this particular application will negatively affect the amenity or safety of the neighbourhood. Mr Spangler has provided insufficient facts or evidence to support Council's claim in this regard.
23. Mr Buckley correctly identifies that the Act allows applicants to apply for a liquor licence prior to the commencement of a development. The reasons for that are to allow developers to secure a liquor licence prior to embarking on the costly exercise of obtaining development approvals.
24. In these cases, if the application, is approved such liquor licences are subject to a condition that no trade in liquor will be permitted until such time as all development, building and health approvals are formally obtained.

Objection of Mr Mike Harvey

25. Mr Harvey lodged an objection in respect of the takeaway liquor component of the application. Mr Harvey is a resident of the area and has also disclosed that he has a commercial business interest in proximity to the proposed Tavern, being a licensed supermarket at Rosebery.
26. Mr Harvey states there will be a negative impact upon the amenity of the community if a new liquor licenced business is established in an area with low population as this will threaten existing services to the local community, inclusive of community sponsorship programs supported by local businesses. He also states that a new takeaway outlet is not required as the community is well serviced by other licensed takeaway liquor outlets in the area.
27. Mr Harvey also raises concerns there will be increased traffic in the residential streets of Forrest Parade and Flynn Circuit which will impact on local residents.

Response to the objection

28. Mr Buckley responded to the objection on behalf of the Applicant by noting the objector does not reside or have an interest within the neighbourhood and submitted that this objection should be treated as irregular and invalid. Mr Buckley also stated that the objector has identified himself as a business competitor of the proposed Tavern and does not have standing as an objector under section 47F(3) of the Act.

Assessment of objection:

29. The grounds of Mr Harvey's objection meet the criteria set out in section 47F(2) of the Act. Mr Harvey does not reside in the suburb of Bellamack, but in the adjoining suburb of Rosebery, located 2.4 kilometres from the proposed premises. Other than Mr Harvey's own licensed retail liquor outlet, located two kilometres from the proposed Tavern, the next closest liquor outlet is 2.9 kilometres from Mr Harvey's residence. Whilst Mr Harvey

does not reside in Bellamack he has standing to lodge an objection, being a person residing and working in the neighbourhood to which this application relates. The objection was lodged within the objection period.

30. The objection refers to the negative impact the Tavern will have on the community but does not provide any facts or evidence to support this statement. An additional takeaway liquor outlet with the capacity to trade on Sundays may have a financial impact on nearby businesses and clubs that sell alcohol, which in turn may reduce funds provided by those businesses back into community programs. However, that is not a valid ground for objection to the application under consideration.
31. Mr Harvey has disclosed his business interest in a licensed supermarket in a neighbouring suburb and his objection does contain an element of commercial interest by noting the likely impact of authorising another liquor outlet and creating additional competition between licensed premises.
32. Despite the fact Mr Harvey does reside in the subject neighbourhood this objection must be afforded less weight due to the fact that he is a potential commercial competitor holding a liquor licence at the Rosebery IGA, which is also currently under construction.
33. In regards to the submission regarding low population, Bellamack is a newly developed suburb which is still under development and one which will attract additional residents as the development of the suburb proceeds. Palmerston and the surrounding areas have experienced significant population growth since 2006 when the moratorium on the grant of takeaway liquor licences was implemented.
34. In regards to the concerns of traffic congestion and safety, at this stage this is purely speculative and there is no evidence to suggest an increase in traffic caused by people attending the Tavern will be any more significant than that for other new businesses established in the neighbourhood, including the serviced apartments in the locality. Obviously there will be further increases in traffic in the area as new residents move into the suburb.

Objection of Ms Caron and Mr Liam Banks

35. Ms and Mr Banks lodged an objection to the application for the grant of a Tavern and takeaway liquor licence which they submit will have a direct impact on their family and neighbourhood, including a negative impact on the health, education, public safety and social conditions in the community.
36. Ms and Mr Banks submit that the area is not zoned for a tavern and state that when they purchased their property off the plan they were told that the site to which this application relates was for mixed use purposes including apartments, café, shops and a childcare centre. They state that they would not have purchased the land in Bellamack had they been aware of the potential for a tavern and the prospect of loud music and other disturbances. They also submit that the proximity of the Tavern to the special school is inappropriate.
37. Ms and Mr Banks have been residents of the Moulden and Bellamack area for several years and express concerns there will be an increase in antisocial behaviour, which they witnessed and experienced whilst residing in Moulden. The objectors note that several years ago Moulden had pleasant parks and playgrounds for community use however these have been destroyed by drunks and antisocial behaviour culminating in the City of Palmerston removing the infrastructure and leaving just grassed areas.

38. Ms and Mr Banks reside within close proximity to Father Gerry Rennie Park that has facilities such as picnic tables and shade. They are concerned the close proximity of the park to the proposed takeaway liquor outlet will encourage people to utilise the park to drink and sleep on the picnic tables.
39. The objectors also raise concerns regarding the takeaway liquor trading days and hours and state there are no venues, other than clubs selling alcohol to bona fide members, selling takeaway alcohol on a Sunday in Palmerston. Ms and Mr Banks also state the Moulden supermarket, located some 650 metres from the proposed tavern, ceases trade in takeaway alcohol at 21:00 hours compared to 22:00 hours as proposed for the Tavern. They submit there are sufficient takeaway outlets in Palmerston with the closest being only 650 metres away and furthest 7.4 kilometres from the Tavern site. The objectors also raise concerns that the hours and days of trade will increase the traffic flow and bring unwanted attention to the area.

Response to the objection

40. Mr Buckley responded to the objection on behalf of the Applicant and acknowledged that the application for zoning will be progressed with the Development Consent Authority. In respect to Ms and Mr Banks' past negative experiences in the Moulden area, Mr Buckley submits this could be attributed to any facility located in Moulden and has no relevance to this particular application.

Assessment of objection

41. The objectors are residents of the relevant neighbourhood and have standing to lodge an objection. The objection relates to the amenity of the neighbourhood in which the proposed Tavern will be located and therefore meets the criteria set out in Section 47F(2) of the Act. The objection was lodged within the required timeframe.
42. Ms and Mr Banks have resided in the City of Palmerston (Moulden and Bellamack suburbs) over several years and have most likely seen and experienced both positive and negative changes in these suburbs over the years. Their previous experiences and observations regarding antisocial behaviour and the affect it has in a community warrant proper consideration.
43. The Applicant has acknowledged that the property is not at this stage zoned for a Tavern and that a re-zoning application will need to be made via the planning process. That process is outside the jurisdiction of the Director-General and a matter for the Development Consent Authority. As noted above, the Act clearly provides for an applicant to apply for a liquor licence prior to obtaining planning approval for the obvious reason: if a liquor licence is not granted then, in the majority of instances, the development application will not proceed.
44. Mr and Ms Banks' submission regarding the licenced trading hours of Moulden Supermarket are noted however that supermarket has similar licence conditions to most supermarkets and it is the individual licensee's prerogative to cease liquor trade earlier than the licensed hours should they decide to do so. Those decisions are normally taken on the basis of commercial considerations. It should also be noted that the long established Palmerston Tavern is authorised to sell takeaway liquor on Sundays.
45. Ms and Mr Banks correctly identify there are a number of takeaway liquor outlets established in Palmerston, excluding associated clubs who can sell takeaway alcohol to bona fide members. However, the objection does not identify any specific harm that would arise for the grant of liquor licence, including a takeaway liquor component, to the proposed Tavern that would not be equally as applicable to any liquor outlet in the greater Palmerston area.

46. The issue raised in respect of increased traffic in the area is addressed elsewhere in this decision and it would be reasonable to expect an increase in traffic as more residents and businesses move into the new suburb of Bellamack.

Objection of Mrs Joanna Taylor

47. Mrs Taylor lodged an objection to the grant of a Tavern liquor licence and the takeaway liquor licence. She states that the granting of a liquor licence will disadvantage the amenity of the neighbourhood surrounding the Tavern which will detrimentally impact upon the health, education, public safety and social conditions in Bellamack and the surrounding areas.
48. Mrs Taylor is of the opinion that Palmerston is already adequately serviced with takeaway liquor outlets and notes there are approximately 10 takeaway liquor outlets already located in Palmerston, excluding members' clubs, varying in distance from the proposed Tavern from 650 metres to seven kilometres. It is also noted that there are three other premises in Palmerston under construction that will be applying for a takeaway liquor licence. Mrs Taylor submits the additional outlet would be of no benefit for the community and there has not been a recent significant increase in population to justify another takeaway liquor licence.
49. Mrs Taylor states that itinerants dependent on alcohol would be attracted to camp and drink in the undeveloped bush areas close to the proposed Tavern where they could purchase alcohol. She submits there are already itinerants occupying several bush camps adjacent to Elrundie Avenue, who have been observed being intoxicated. Mrs Taylor also submitted that there has not been a significant increase in population to justify another takeaway liquor outlet which will attract itinerants into the area, resulting in an adverse effect on the public facilities and degradation of the family oriented suburb and parks. In addition, Mrs Taylor stated that the location of the Tavern in relation to the special school child care centre is a safety and security concern.
50. Mrs Taylor states the majority of the takeaway outlets in Palmerston close at 21:00 hours and do not trade on a Sundays whereas the Applicant has applied to trade until 22:00 hours, including trading on Sundays. She submits that this will increase the number of visitors to the neighbourhood, both by foot and by vehicle, including attracting intoxicated people and drunk drivers into the area. Mrs Taylor states that Bellamack has already experienced problems with "hoon drivers" using the streets as race tracks.
51. Mrs Taylor states Bellamack has no public toilet facilities and that the parks in the neighbourhood are considered family friendly and safe environments. Mrs Taylor also submits that intoxicated patrons leaving the Tavern or purchasing alcohol from the takeaway outlet may utilise the community parks and amenities in a negative manner, behaviour that she has observed and witnessed in other sections of Palmerston both during the day and night.
52. Mrs Taylor states further that having a tavern in the locality may attract more antisocial behaviour, especially around the seniors' village which is located less than 500 metres from the proposed Tavern site. Some of the senior village's properties back onto the site and noise emanating from the premises is a concern, especially when patrons leave the premises intoxicated and disrupt the neighbourhood and impact on the residents' prospects of getting a good night's sleep.
53. She submits that Bellamack was promoted and considered as a family oriented suburb with numerous families with children residing there. Children walk or cycle to school and there is a bus stop used by school children daily 100 metres from the proposed Tavern.

54. Mrs Taylor believes having a Tavern with a takeaway liquor outlet will impact on the profile of the area and negatively affect the value of residential properties. She states there was no mention of a Tavern on the original plans and residents purchased into the area on the understanding a child care centre was to be built there. She submits that the median property prices in the suburbs of Palmerston that have a takeaway liquor outlet are considerably lower in comparison to other suburbs and also experience greater problems associated with alcohol abuse.
55. Mrs Taylor also raises concerns the Applicant does not have experience in managing a licensed premises in the Northern Territory and the impact this may have on the community.

Response to the objection

56. Mr Buckley responded on behalf of the Applicant and raised the issue of the standing of the group objection. He also acknowledged that the Applicant is required to apply to and obtain approvals from the Development Consent Authority.
57. In respect of Mrs Taylor's submission regarding the Applicant's lack of experience in the liquor industry in the Northern Territory, Mr Buckley advised that should the Tavern licence be approved the Applicant will engage an experienced Manager, as approved by the Director-General, to oversee the conduct of the business.

Assessment of objection

58. Mrs Taylor is a resident of the relevant neighbourhood and therefore has standing to lodge an objection. Her objection concerns the amenity of the neighbourhood within which the Tavern is proposed to be located and therefore falls within the grounds for objection set out in the Act. Mrs Taylor's objection was lodged within the objection period.
59. Excluding clubs, Palmerston currently has nine existing takeaway outlets, however none are situated in lower part of Palmerston which is predominantly a residential area. The Australian Bureau of Statistics recording of population statistics in 2011 combines both Bellamack and Rosebery's population when the number of residents over the age of 15 years was 2 403. The population of Rosebery-Bellamack in 2013 was estimated at 5 019, recording the fastest growth rate of all population centres in the Northern Territory at 14% per annum.
60. Whilst the assertion that yet to be built premises will attract itinerants and anti-social behaviour is necessarily speculative that is a possibility for any liquor outlet in the Northern Territory. Similarly, selling takeaway alcohol adjacent to a special needs school does raise concerns relating to the safety and welfare of the students through their observing drunken antisocial behaviour. A key factor in those considerations is the type of venue developed, the preferred client base of the licensee and the manner in which the risk of adverse liquor related issues is managed.
61. In regards to the proposed takeaway trading hours, the hours sought by the Applicant are consistent with those applicable to all similar licences in the Darwin and Palmerston areas. Hotels and Taverns are permitted to trade in takeaway alcohol on Sundays whilst stores and supermarkets are not. That has been the case for many years and the Act was amended recently to reinforce the fact that supermarkets and stores are not permitted to sell takeaway alcohol on Sundays. It has always been the case that individual licensees may exercise the prerogative to close earlier than the authorised hours if they elect to do so.
62. Negative effects on property values can be related to a number of factors and cannot be attributed solely to the establishment of licensed premises in a particular neighbourhood as numerous other market force factors dictate the value of a property.

63. The fact that Bellamack is already experiencing “hoon drivers” is an indication that some members of the community will engage in antisocial and unsafe behaviour even when there are no licensed premises in the suburb. It is entirely speculative to suggest that the Tavern alone will attract more of the type of dangerous behaviour that is already occurring.
64. Noise emanating from the Tavern, including from entertainment and patrons leaving the premises at night, is a matter of concern allowing that the proposed Tavern site is to be located in a predominantly residential neighbourhood. Noise from entertainment and activities at licensed premises can however be adequately controlled by the imposition of appropriate noise abatement licence conditions. Noise disturbances caused by patrons leaving licensed premises are more problematic as licensees have little control over patrons once they leave the licensed premises. It is noted however that the proposed trading hours for the Tavern are from 10:00 hours to 23:59 hours seven day per week. The closing time is considerably earlier than that of similar venues operating in residential settings in the Territory.
65. It should be noted that Mrs Taylor’s objection was initially lodged as a group objection on behalf of 32 named persons. A delegate of the Director-General determined that the group of residents did not have standing to lodge an objection to a liquor licence application as they do not meet the criteria in the Act as being a community-based organisation or group. The delegate also determined that Mrs Taylor’s personal objection was also invalid.
66. The Director-General reviewed the delegate’s decision, and confirmed that the group of residents did not meet the community based organisation test to be eligible to lodge an objection. The Director-General did however overturn the decision rejecting Mrs Taylor’s personal objection and determined that the objection would be taken into account in the final decision as to whether a liquor licence should be granted.

Objection of Hon Peter Chandler MLA, Minister for Education

67. Minister Chandler objects to the grant of the licence in his capacity as Minister for Education. The grounds of objection include the potential for adverse impacts on amenity of neighbourhood. Specifically, this objection raises concerns regarding the location of the proposed Tavern in close proximity to the proposed special school and the potential for negative impacts on the students, families and staff of the school and their likely exposure to antisocial behaviour that may be associated with a takeaway liquor outlet in the vicinity.
68. Minister Chandler also notes that as the school is not yet open there is no school council in place to speak on behalf of the interests of the school in terms of an objection to the grant of the licence sought.

Response to the objection

69. Mr Buckley responded on behalf of the Applicant and noted that Minister Chandler’s objection was lodged outside the objection period with no explanation as to the late lodgement. He submitted that the objection was therefore invalid and should not be considered by the Director-General in considering the application. Mr Buckley also noted that the objection of Mr Ken Davis expresses the view of the Department of Education and that objection was lodged within the prescribed objection period.

Assessment of the objection

70. This objection was originally assessed by a delegate of the Director-General as being invalid on the ground it was lodged outside the objection period. It was subsequently revealed that the former Director-General had provided approval to extend the time for lodgement of the objection pursuant to section 127 of the Act. The objection was

subsequently reviewed by the Director-General and assessed as valid given the extension of time granted.

71. Minister Chandler's objection is based on similar grounds to that of Mr Ken Davies, the CEO of the Department of Education, and concerns primarily the potential for adverse impacts on students and staff of the proposed special school should the takeaway liquor licence be granted.
72. Whilst the submission that yet to be built premises will attract itinerants and antisocial behaviour is necessarily speculative unfortunately that adverse impact is a possibility for any liquor outlet in the Northern Territory, particularly where takeaway liquor is concerned. Similarly, selling takeaway alcohol adjacent to a special needs school does raise concerns relating to the safety and welfare of the students through their observing drunken antisocial behaviour. As noted in the assessment of Mrs Taylor's objection, a key factor in those considerations is the type of venue developed, the preferred client base of the licensee and the manner in which the risk of adverse liquor related issues is managed.
73. In this instance the Applicant has presented a comprehensive Risk Assessment Management Plan and a Business Plan providing details of management practices that will be implemented to minimise the risks associated with licensed premises and the minimisation of antisocial behaviour.

Stakeholder Comments

74. Comments have been received from the Drug and Alcohol Policy Unit (NT Police), the Development Consent Authority, the Department of Health's Alcohol and Other Drugs Services and the Northern Territory Fire Rescue Services as follows.

Drug and Alcohol Policy Unit

75. Drug and Alcohol Policy Unit of NT Police advised that they had reviewed the application and held a meeting between officers and the proposed Licensee which resulted in a number of Police's recommendations being implemented, for example restrictions on the sale of cask wine, dress and behavioural standards and the like. NT Police did not lodge a formal objection to the grant of the licence.

Development Consent Authority

76. As noted elsewhere in this decision, the Applicant has not yet applied to the Development Consent Authority for approval for the proposed land use for the Tavern. Subject to the lodgement of a formal application and the approval of the application, the Development Consent Authority has advised there are no other town planning concerns in relation to the application for a tavern liquor licence at this time.

Department of Health, Alcohol and Other Drugs Services (AoD)

77. AoD requested that the Director-General consider patron and community safety and amenity when determining this application and takes steps to ensure that the venue clearly displays signage to delineate the non-Smoking areas from the smoking areas.

Northern Territory Fire Rescue Service (NTFRS)

78. NTFRS are unable to provide comment on the fire safety aspects of the application until the completion of construction of the premises. Once that occurs formal fire compliance inspections will be undertaken, including determination of the maximum patron numbers allowable on the premises.

Community Consultation

79. The proposal for the construction and licensing of the proposed Flynn Tavern attracted media coverage instigated by concerned residents. The Applicant also held a public meeting on the site of the proposed Tavern to explain his application and answer questions from members of the community.
80. As the Director-General of Licensing, I also convened a Community Forum on 3 March 2016 in Bellamack to further inform myself of community concerns regarding the proposed Tavern. The Forum was attended by approximately 70 people, the majority of whom were residents of the local neighbourhood.
81. It was clear from discussion during the Forum that a prime issue of concern to residents opposing the application is the takeaway liquor component of the licence. A number of speakers at the forum expressed concerns with the potential for the Tavern to attract itinerants and other undesirable elements to the neighbourhood with resultant antisocial and alcohol fuelled behaviour in the parks and surrounding areas. Concerns were also raised regarding the location of the Tavern in proximity to the special school and the prospect of students being exposed to public drinking and antisocial behaviour.
82. Residents also raised concerns about the proximity of a laneway to the suburb of Moulden, located just across the road from the Tavern site. Speakers noted that Moulden was a suburb suffering from alcohol fuelled antisocial behaviour and the laneway would provide ready access to the Tavern for those people who engage in that type of behaviour and result in the same type of negative impacts in Bellamack.
83. Residents also raised concerns that they were not aware of the prospect of a Tavern being constructed in Bellamack when they purchased their homes. They also expressed concerns regarding the potential for noise disturbances, especially in the late evening.
84. A number of speakers also expressed the view that there are already sufficient takeaway liquor outlets in Palmerston and there is no community need for an additional outlet. Speakers in favour of the Tavern noted that the itinerant drinking problem was widespread and not restricted to any particular suburb, noting that despite the fact there is no takeaway liquor outlet in the suburb of Driver itinerants frequent that suburb, including drinking in public places and engaging in antisocial behaviour.
85. A number of residents who also spoke at the Forum are in favour of the development of the Tavern, both with and without a takeaway liquor offering. Those residents spoke of the desirability of having a tavern as a focal community point for the Bellamack community and the need for such facilities in the neighbourhood given the growing population.
86. Whilst some people opposed to the application noted the proximity of the Tavern to the seniors' village and the potential for disruption, residents of the seniors' village in attendance at the Forum actually spoke in favour of the grant of the Tavern licence, albeit not all were in favour of the takeaway liquor component.
87. In response to the concerns raised at the Forum the Applicant advised those attending that he intended to develop a high standard Tavern, in keeping with the quality suburb of Bellamack. He stated that there was no advantage to him in condoning irresponsible service of alcohol practices as that would deter the types of patrons he hoped to attract to the premises. The Applicant also noted that all staff of the Tavern would be trained in the responsible service of alcohol and would comply with the Tavern's Risk Assessment Management Plan.
88. The Applicant advised that he proposed to install a high quality CCTV system at the premises, including a camera monitoring the nearby laneway to Moulden.

89. The Applicant acknowledged the concerns of residents in respect of the sale of takeaway liquor and proposed to have a membership type arrangement for those who wished to utilise that facility. He stated that such a system would ensure the licensee was able to monitor who was purchasing takeaway liquor with a view to cancelling membership if patrons engaged in inappropriate behaviour.

Summary Assessment of Application and Objections

90. The Applicant has provided sufficient evidence to satisfy the requirements set out in the Act. In addition, Mr Anthony has provided satisfactory evidence that his company is financially sound and that he is an appropriate person to be appointed as Manager under the liquor licence.
91. As noted above, a number of the formal objectors opposed the grant of a Tavern liquor licence in totality. However, the majority of objectors, including those residents who attended and spoke at the Community Forum, were opposed to only the takeaway component of the application. In addition, a number of people attending the Forum voiced their support for the Tavern itself, considering that to be a facility that the new community needs.
92. In this instance I am not persuaded by the formal objections to refuse the application for a Tavern liquor licence for the sale of alcohol for on premise consumption. In reaching that decision the objects of the Act, as prescribed by section three, are taken into account. In considering the risk of harm that may arise from the grant of such a licence it is also necessary to consider the competing objectives of the public interest in the sale, provision, promotion and consumption of liquor and the facilitation of a diversity of licensed premises and associated services for the benefit of the community.
93. Whilst there are a number of premises in the Palmerston CBD authorised for the sale of alcohol for on-premises consumption, including a number of members only clubs, there are currently no such premises established in the southern portion of Palmerston within which Bellamack is located. The closest tavern or hotel to the subject premises is the Palmerston Tavern, some 4.5 kilometres from the proposed Flynn Tavern site. In balancing the objectives of the Act I am satisfied that the grant of a Tavern liquor licence will address the needs of the community by providing diversity of licensed premises in an area where there is no similar facility at present.
94. In relation to the takeaway liquor component of the licence application, reference must be made to the Takeaway Guideline Criteria issued in December 2014 by the former Northern Territory Licensing Commission following the lifting of the moratorium on takeaway liquor licences that had been in place since 2006. Applications for new takeaway liquor licences must fall within the following guidelines:
- a) A takeaway liquor licence in a new residential development; or
 - b) A takeaway liquor licence to be located in an area that has had recent, substantial population increase: or
 - c) 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
 - d) A takeaway liquor licence for a location where there is a very clearly established public need.
95. In this instance the application clearly falls within criteria a) and b) allowing that Bellamack is a relatively new suburb that has experienced significant population growth in recent years, as identified in paragraph 59 above. The Guideline requires that an application for a new takeaway liquor licence meet one of the stated criteria. I am satisfied in this instance that the subject application meets two of the criteria.

96. The Guideline also requires that other matters such as public interest and *Liquor Act* requirements as addressed above, must also be taken into consideration along with the following considerations:
- e) The density of takeaway liquor venues in the vicinity of the proposed application;
 - f) The proposed business model; and
 - g) The propensity for alcohol-related antisocial behaviour and harm in the vicinity of the proposed application.
97. Whilst it is appropriately acknowledged that there are a number of takeaway liquor outlets in the greater Palmerston area there are presently none in the suburb of Bellamack and one recently granted but as yet non-operational store liquor licence in the nearby suburb of Rosebery. I am satisfied that there is not a proliferation of takeaway liquor outlets in the area to which this particular application relates.
98. Consideration of the propensity for alcohol related antisocial behaviour and harm in the vicinity of the proposed Tavern is clearly the most pressing issue raised by the formal objectors and those who spoke against the grant of the takeaway liquor licence at the Community Forum. Various residents recounted that Bellamack is a well-designed and family friendly area that currently does not suffer from the alcohol related antisocial behaviour that exists in other areas of Palmerston and, for that matter, greater Darwin and most major population centres in the Northern Territory. The clear view of those residents is that should the takeaway liquor licence be granted then the alcohol related problems experienced in neighbouring suburbs will occur in Bellamack.
99. Alcohol abuse issues and the ensuing antisocial behaviour in Northern Territory cities and towns is well documented and well known to residents of the Northern Territory as a whole. It is an unfortunate fact that premises licensed to sell takeaway alcohol attract itinerants and others with alcohol related problems and pose the risk of the antisocial behaviour and associated harms impacting on the community as a whole.
100. In response to the concerns expressed by residents the Applicant, of his own initiative, provided written confirmation following the Community Forum that, should the takeaway liquor licence be granted, a mandatory membership or registration system will be implemented to identify patrons and record sales of takeaway liquor. The system will require any person seeking to purchase takeaway liquor to register as a "member" of Flynn Tavern, similar in many respects to the systems in place at licensed community clubs.
101. The Applicant submits that such a scheme would greatly assist in the regulation of takeaway liquor sales and strengthen existing safeguards aimed at ensuring the maintenance of community amenity and public safety. The Applicant also noted that he would provide membership data and footage from the CCTV system to NT Police as a resource for the prevention and regulation of antisocial behaviour in the neighbourhood.
102. The submissions of the objectors are acknowledged as genuine, as are the concerns expressed regarding the potential for alcohol related antisocial behaviour to occur in a neighbourhood that appears to suffer little harm in that regard at present. However, in this instance the applicant has proposed an innovative "membership" scheme designed to minimise the risk of that occurring.
103. In summary, the substance of the majority of objections and opposition to the grant of a liquor licence include the potential for the congregation of itinerants in the vicinity of the Tavern and resultant antisocial behaviour, an increase in foot and road traffic due to patrons visiting the Tavern and the proximity of the proposed Tavern to the proposed special school. As noted above in this decision, those concerns have been addressed by the Applicant in some considerable detail.

104. A number of objectors raised the issue that the development of the Tavern does not presently have the approval of the Development Consent Authority and therefore the consideration be refused until that approval is obtained. Others raised the issue that while the developer may have proposals as to the concept of the premises and the manner in which it will operate, there is no assurance that the developer will not on-sell or lease the premises to another party once construction is completed. With respect, those submissions appear to misapprehend the purpose of section 26(2) of the Act:

*(2) An application under subsection (1) may be made in respect of **premises which are to be constructed or which are under construction** and, in respect of such premises or proposed premises, **by a person who does not intend to carry on any business under the licence being applied for.***

105. That section is clearly aimed at allowing developers to apply for a liquor licence for premises that are yet to be constructed or which are under construction and prior to obtaining development approvals. The rationale behind section 26(2) is straightforward, it provides for a developer to obtain certainty as to the grant of the liquor licence prior to incurring the expense of involved with obtaining planning approval.

106. Section 26(2) also clearly contemplates that developers may obtain a liquor licence during the development phase for premises they do not intend to operate personally. The purpose of that provision is to permit developers to market the premises to another person or company as an already licensed venue once construction is completed. Again, there is nothing remarkable in respect of the legislative allowance for a developer to build licensed premises that will ultimately be operated and managed by another party as occurs for the majority of retail outlets included in a commercial development.

107. It should also be noted that a person or entity who acquires licensed premises from a developer after construction will be required to submit to the normal probity and financial capacity investigations that apply to any liquor licence applicant. In addition, developers applying for a liquor licence prior to construction of the premises are required to submit a detailed business plan identifying the concept for the venue, the manner in which it will be operated and the processes that will be implemented in respect of harm minimisation. An incoming licensee would be under the same obligation to implement the business plan as submitted to the same extent as would occur if the developer continued as the licensee.

108. In all the circumstances I am not persuaded that the application for a tavern liquor licence, including authority for the sale of takeaway alcohol, should be refused.

Summary

109. The application for a Tavern liquor licence, including authority for the sale of takeaway liquor, lodged by Mr Anthony on behalf of Armada Hotels and Leisure Pty Ltd satisfies the requirements set out in the Act for the grant of liquor licence of that type.

110. Materials submitted in support of the application indicate that the proposed Manager, Mr David Anthony, is a fit and proper person to hold a liquor licence and that the Applicant company has sufficient financial resources.

111. I am satisfied that this application satisfies two 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 a new suburb that has experienced substantial and recent population increase. It is evident that significant population increase has occurred in Bellamack over recent years. New developments of both residential and commercial properties in the vicinity indicate that the proposed venue for the Tavern is in a location which will provide services to increasing numbers of residents and other visitors to the suburb.

112. The proposed business model outlined in the application is for a medium sized Tavern with a takeaway liquor offering. The grant of a takeaway liquor licence brings with it the inherent risk that people with alcohol related problems will visit the premises and potentially engage in antisocial behaviour in the vicinity of the Tavern and in the surrounding neighbourhood. In this instance I am satisfied that the Applicant will put in place a system capable of identifying clients of its takeaway liquor outlet, as detailed above. The requirement to implement such a system, to the satisfaction of the Director-General, will be a condition attached to the grant of the licence and the system will be required to be in place prior to the licensee commencing to trade in the sale of takeaway liquor.
113. The formal objections and the input from residents who attended the Community Forum are acknowledged and considered above in some detail. The concerns of residents to ensure that their neighbourhood remains a safe and family friendly environment are evident and genuinely motivated. It was also clear from the discussion at the Community Forum that not all residents are opposed to the development of the Tavern and that some residents of the local community welcome the construction of a social hub in their neighbourhood. It is also anticipated that at least a proportion of the 5 000 residents of Bellamack/Rosebery who did not lodge formal objections or participate in the Community Forum will enjoy the convenience of a Tavern and take away liquor outlet within a neighbourhood that presently does not include those facilities.

Decision

114. 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 approve the issue of a Tavern Licence with authority for the sale of takeaway liquor to Amada Hotels and Leisure Pty Ltd for the Flynn Tavern to be constructed at 127 Flynn Circuit, Bellamack in the Northern Territory.
115. The licence will be issued immediately following the publication of this decision and, in accordance with section 31(1) of the Act, is subject to a condition that the Licensee will not commence trade in the sale of liquor under the licence until such time as the proposed premises are constructed and a certificate of occupancy under the *Building Act* has been issued to the licensee, authorising it to conduct the business of a Tavern and take away liquor outlet at the premises.
116. Commencement of trade in the sale of liquor will also be conditional on the Applicant obtaining the necessary approval from the Development Consent Authority. The Applicant will also be required to obtain the necessary approvals from the Northern Territory Fire Rescue Service in respect of patron capacity and fire safety issues prior to commencing operation.
117. In addition, the Applicant is required to document and implement a membership/registration scheme for persons purchasing takeaway liquor from the Tavern. The commencement of trade in the sale of takeaway liquor will be conditional on the Applicant obtaining the approval of the Director-General for the proposed scheme.
118. The licence will become operative, subject to the normal conditions associated with a Tavern liquor licence, once the Applicant has presented evidence to the satisfaction of the Director-General that the premises have been satisfactorily constructed and the appropriate statutory approvals, including the issue of a certificate of occupancy, have been obtained by the licensee.

Application for Electronic Gaming Machine Licence

119. The Applicant has also applied for a gaming machine licence to authorise the operation of 20 electronic gaming machines at the proposed Flynn Tavern. The *Gaming Machine Act* provides that a body corporate that has applied for a hotel/tavern liquor licence may also apply for a gaming machine licence. Consideration of the application for a gaming machine licence was deferred pending the determination of the liquor licence application. Allowing that a tavern liquor licence has now been granted, the gaming machine licence application will now be assessed in accordance with the criteria set out in the *Gaming Machine Act*.

Review of Decision

120. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. An application for a liquor licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.

121. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.



Cindy Bravos
Director-General of Licensing

13 April 2016