

Director-General of Licensing

Decision Notice

MATTER:	Review of Delegate Decision – Refusal to Issue Liquor Licence
APPLICANT:	Laddmac Pty Ltd
PREMISES:	Driver Supermarket 61 Driver Avenue Driver NT 0830
LEGISLATION:	Part III of the <i>Liquor Act</i> and Part 3 of the <i>Licensing (Director-General) Act</i>
DECISION OF:	Director-General of Licensing
DATE OF DECISION:	10 January 2017

BACKGROUND

1. On 24 December 2016, Mr Dallas Mackay on behalf of Laddmac Pty Ltd lodged an application for the grant of a liquor licence for the sale of takeaway liquor for the premises known as Driver Supermarket located at Lot 1400, Shop 4, 61 Driver Avenue, Driver in the Northern Territory.
2. By decision dated 21 August 2016, a delegate of the Director-General of Licensing (the Director-General) refused to issue the licence on the grounds that the application failed to meet the requirements of the Takeaway Guideline Criteria issued in December 2014 by the former Northern Territory Licensing Commission, specifically that the applicant did not demonstrate that the licence was for a location where there is a very clearly established public need or where there had been a recent substantial population increase.

CURRENT SITUATION

3. On 21 September 2016, Mr Dallas Mackay, on behalf of Laddmac Pty Ltd, sought a review by the Director-General of the decision of the delegate to refuse to issue the licence. The grounds on which Laddmac Pty Ltd seeks the review are:
 - that the objections lodged by Mr Wayne Zerbe, Mr Scott and Mrs Katherine Winchester, the Department of Health and the Palmerston Council do not provide sufficient evidence to support their objections;
 - that the objections of Mr Zerbe and Mr and Mrs Winchester are not representative of the Driver community; and
 - a very clearly established need for a takeaway liquor licence is demonstrated by an increase in population and that a number of liquor outlets in the vicinity service members only.

4. Part 3 of the *Licensing (Director-General) Act* provides for the review of delegate decisions by the Director-General. Section 14 of that Act provides that in conducting a review of a delegate decision, the Director-General must take into account any matter that the Act under which the delegate decision was made requires the Director-General to take into account in reviewing the decision.
5. After reviewing the delegate decision, the Director-General must affirm the decision, vary the decision or set aside the decision and substitute a new decision.

CONSIDERATION OF THE ISSUES

6. Driver Supermarket is located at Shop 4, 61 Driver Avenue, Driver in the Northern Territory. The Applicant submitted that the supermarket currently offers a large range of grocery items to local residents and visitors from surrounding suburbs.
7. Should the license be granted, the applicant proposes to operate the takeaway liquor outlet under the "Bottlemart" banner. Bottlemart and Bottlemart Express are the trading names for a group of independently owned hotels and bottle shops which form part of the Liquor Marketing Group which operates throughout Australia. It is proposed that the liquor component of the supermarket will provide a selection of wines, spirits, beers and a range of ready to drink alcoholic beverages.
8. The proposed trading hours for the sale of liquor are Monday to Friday - 10:00 am to 9:00 pm, Saturday and Public Holidays - 09:00 am to 9:00 pm with no trading Sunday, Good Friday or Christmas Day.

The Applicant

9. The proposed Licensee is Laddmac Pty Ltd with Mr Dallas Mackay, the sole director of Laddmac Pty Ltd, proposed as the Nominee.
10. The Applicant has provided documentation indicating that it has sufficient financial resources to operate the proposed business. In addition, the Applicant has further provided satisfactory evidence attesting to the managerial capacity, general reputation and character of the company and its director.
11. Both the Applicant and Mr Mackay are known to the Director-General as the Applicant currently holds a liquor licence for Gray Supermarket with Mr Mackay presently being a dual nominee of that licence.
12. The National Police Certificate for Mr Mackay indicates no disclosable court outcomes and the materials submitted in support of the application demonstrate that Mr Mackay is a fit and proper person for the purposes of holding a liquor licence and managing the business conducted under a liquor licence.

Advertising

13. As indicated in the delegate decision dated 21 August 2016, the application was advertised in the Northern Territory News on Wednesday, 1 June 2016 and Friday, 3 June 2016. The objection period expired on Monday, 4 July 2016.

Objections

14. A total of 3 objections were received within the objection period with a fourth objection lodged outside the objection period.

15. The objections lodged by the following persons or agencies were assessed as meeting the criteria for valid objections prescribed in sections 47F(2) (grounds for objection), 47F(3) (eligibility to make an objection), and 47F(4) (within the objection timeframe) of the *Liquor Act* (the Act):
 - Mr Wayne Zerbe;
 - Mr Scott and Mrs Katherine Winchester; and
 - The Department of Health.
16. The fourth objection lodged by City of Palmerston had been assessed as meeting the criteria for valid objections prescribed in sections 47F(2) (grounds for objection) and 47F(3) (eligibility to make an objection) of the Act, however it was lodged outside the objection period. In this respect, prior to the closure of the objection period, City of Palmerston requested further time to consider the application as its Council meeting that was to be held on 5 July 2016, the day following the closure of the objection period.
17. Section 127 of the Act allows the Director-General to extend or abridge the time in which an act or thing is required to be done under the Act and with respect to the objection lodged by City of Palmerston, I determined to use my discretion to extend the time within which an objection may be lodged, thus the City of Palmerston objection is a valid objection.
18. Each of the valid objections was considered and assessed individually by the delegate, however, I note that the objections raised similar issues of concern. The substance of the objections may be summarised as follows:
 - the location of the premises, being within 200-300 metres of a primary school, pre-school and community centre is inappropriate for a takeaway liquor outlet;
 - that a licensed premises in this location will lead to an increase in anti-social behaviour;
 - that there are a number of other liquor licensed premises in the Palmerston area where takeaway liquor can be purchased and that there is no need for a further licensed take away liquor outlet.
19. In addition, the Department of Health has provided several reference links to both national and Northern Territory specific data which highlights points relating to domestic violence in high liquor outlet density regions, pricing of liquor, NT consumption rates and Indigenous health issues. The Department of Health's letter is based on information/statistics gathered through analysis of the effects of alcohol both physically and fiscally within the Northern Territory and more broadly throughout Australia.
20. The Department's objection indicated that they hold no data as to what would be the impact of this particular application if granted, however that "*establishing more premises licensed to sell take away alcohol will not diminish the problems.*"

Applicant's Response to the Objections and Department of Health Submission

21. The Applicant responded to the objections lodged advising that careful consideration has been given to the location of the premises in terms of positioning to public amenities and noted that there were no objections lodged by surrounding community groups such as the school and pre-school.

22. The Applicant acknowledged the number of liquor outlets in the Palmerston region and advised that this allows for the easing of pressure on the shopping centres within the Palmerston area. The Applicant also states that the granting of the licence will not cause an increase of people visiting the Driver Supermarket to purchase liquor, rather it will allow for residents to not have to travel out of the area in order to make a liquor purchase.
23. The Applicant has also responded to concerns by objectors that there will be an increase in antisocial behaviour, submitting that the Applicant will abide by responsible sale of alcohol principles. The Applicant submits that they will utilise proactive measures to reduce antisocial behaviours such as communicating both verbally and by way of signage, the regulations that govern issues such as drinking in public spaces.
24. The Applicant also submitted that they encourage community feedback and are active members of the Liquor Stores Association of the Northern Territory, thus allowing the Applicant to be aware of any developing issues. An example provided in relation to the licence held by the Gray Supermarket, is the exclusion from sale of liquor products identified as 'problem products'.
25. The Applicant further submitted that the Northern Territory Police crime statistics for 2015-16 for the Palmerston region show a reduction in crime in the area. The Applicant states that, *"given the increase of liquor outlets over the last 12 months and during the same period there has been a documented decrease in crime statistics one could assume Liquor outlets have not had a negative effect on the community."*
26. In seeking a review of the decision of the delegate to refuse to issue the licence, the Applicant has also submitted that the objections do not *"provide sufficient evidence to substantiate their claim."* Additionally, the Applicant identifies that out of over 3000 residents in Driver, that Mr Zerbe and Mr and Mrs Winchester are the only residents that objected to the application. In this respect, the Applicant has provided correspondence from three residents of the Driver area that support the granting of a licence.

Assessment of Objections

27. In his application for a review of the delegate's decision Mr Mackay raises a number of reasons (grounds) as to why the Director-General should overturn the delegate's decision to refuse to grant the liquor licence. As noted in paragraph three above, Mr Mackay raises two grounds for review in respect of the objections that may be summarised as follows:
 - the objections lodged by Mr Wayne Zerbe, Mr Scott and Mrs Katherine Winchester, the Department of Health and the Palmerston Council do not provide sufficient evidence to support their objections; and
 - the objections of Mr Zerbe and Mr and Mrs Winchester are not representative of the views of the Driver community.
28. The application for review also sets out, in some considerable detail, Mr Mackay's submissions as to why the objections should be given little weight.
29. The Decision Notice of the delegate includes a detailed analysis and assessment of the objections at paragraphs 14 to 67. Having carefully considered the delegate's analysis and assessment of the objections, including the applicant's response, I concur with the delegate's consideration and determination in respect of the content of the objections and the weight afforded to them in terms of the ultimate decision as to whether or not the licence applied for should be granted.

30. Specifically, the delegate did not rely on the objections, in reaching his decision to refuse the application for a liquor licence. The delegate in fact found, as set out in paragraphs 83 and 84 of his Decision Notice:

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 objections, I find that none of the objections are of sufficient weight to persuade me to refuse to grant the licence.* (Emphasis added).

31. It is clear from those statements that the delegate did not base his decision to refuse to grant the liquor licence on the content of any of the four objections. As noted above, I concur with the delegate's assessment of the objections and submissions and the conclusion that the objections do not carry sufficient weight to persuade the rejection of the application.

CONSIDERATION OF THE TAKEAWAY GUIDELINE CRITERIA:

32. The third ground on which Mr Mackay seeks a review of the delegate's decision relates to the application of the takeaway guideline criteria and, in particular, in respect of clearly established public need for the liquor licence due to an increase in population in the neighbourhood in which the Driver supermarket is located.

33. The applicant submits in the application for review that the circumstances have changed over the 16 years since the Driver Supermarket was last licensed for the sale of liquor and that it appears with an increase in population there is a demand and clear public need for an additional liquor outlet. The applicant further submits that the grant of a liquor licence would be convenient to the public so they would not have to drive to other liquor outlets, saving time and providing liquor to consumers at an appropriate price as available at other existing outlets.

34. In the context of consideration of the Takeaway Guideline Criteria a threshold question arises as to which Guideline is applicable to this application on review. As at the time of the delegate's decision, 21 August 2016, the applicable Guideline were that promulgated and issued by the former Licensing Commission in December 2014. That Guideline was revoked and replaced with the "Guideline for applying for a Takeaway Liquor Licence" issued by the Director-General, effective from 19 October 2016. It is fair to say that the Guideline issued by the Director-General is more stringent than the previous version issued by the former Licensing Commission.

35. Part 3 of the *Licensing (Director-General) Act* sets out the powers and functions of the Director-General regarding the review of delegate decisions. Section 14(1)(a) of that Act provides that in conducting and deciding the review the Director-General is to "take into account any matter that the Act under which the delegate decision was made requires the Director-General to take into account in reviewing the decision". On that basis a review by the Director-General is a review in the strict sense requiring the Director-General to consider the materials that were before the delegate at the time of the initial decision and applying the law, in this case including the Guideline, as it stood at the time of the delegate's decision.

36. The delegate clearly assessed the Driver Supermarket application against the December 2014 Guideline as the 2016 Guideline did not come into effect until some months after the delegate's decision. Given the nature of this review it is appropriate that the review also assess

the application against the former Guideline and not the current Guideline issued by the Director-General on 19 October 2016.

37. In December 2014 the former Northern Territory Licensing Commission lifted the moratorium on takeaway liquor licences that had been in place since 2006. In doing so the Licensing Commission also issued a Guideline against which new applications for a takeaway liquor licence would be assessed, with the requirement that new applications meet at least one of the specified criteria set out in the Guideline. The December 2014 Guideline provided as follows:

Takeaway liquor licence applications will only be considered in relation to the following:

- 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.

In considering applications as referred to above, and in addition to the public interest and other requirements for new applications as identified in the *Liquor Act*, key consideration of the Licensing Commission will include, but not be limited to, 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.

38. The delegate's assessment of the Driver Supermarket application against the criteria of the Guideline is set out in paragraphs 70 to 86 of the Decision Notice. The delegate determined, correctly in my view, that the Driver Supermarket is not located in a new residential development, with the suburb of Driver having commenced development in the early 1980's. The applicant is clearly not a producer or liquor products with the result criteria three above is also not applicable to the within application.
39. In the request for review the application relies on the remaining two criteria, namely that the liquor licence will be located in an area that has had recent, substantial population increase and/or the takeaway licence is for a location where there is a very clearly established public need. The delegate determined that neither of those criteria were applicable in this instance and, on the basis the application did not meet any of the criteria set out in the Guideline, determined to refuse to grant the takeaway liquor licence.
40. In the request for review of the delegate's decision the applicant made the following statement in respect of this application and the Takeaway Guideline criteria:
- "The circumstances have changed over 16 years (since the last time the Driver Supermarket held a liquor licence) and it appears with an increase in population, there is a demand for another liquor outlet and to provide customers with a choice which is considered to establish a very clear public need. It would be convenient to the public so they would not have to drive up to other liquor outlets, it saves time and would provide the sale of liquor to the consumer at an appropriate price just the same as any other liquor outlet would charge."* (Emphasis added).

41. Apart from the reference to an affordable housing development in the area the applicant has provided no evidence or statistics indicating that Driver Supermarket is located in an area that has had recent substantial population increase.
42. To the contrary, the Australian Bureau of Statistics (ABS) reports the estimated resident population for the Statistical Area of the suburb of Driver as 3,115 in 2010, increasing to an estimated population of 3,276 in 2014. This represents an overall increase in Driver residents of 5.1% over a four year period or an average population increase of 1.2% per annum. By comparison, for the overall Palmerston Statistical Area the population was estimated by the ABS at 29,055 in 2010, increasing to 33,949 in 2014. This represents an overall increase in population of almost 17% over the same four year period or an annual increase in resident population of 4.2% per annum. During the same four year period the population of Darwin Statistical Area increased by almost 10% equating to an annual increase of 2.4%.
43. It is clear from the ABS estimates of the population of Driver that the suburb has not experienced a recent, substantial significant increase in population. To the contrary, the ABS statistics confirm that the population increase in Driver between 2010 and 2014 has been modest at best and in fact is considerably less than the population increases experienced during the same period in the greater Palmerston and Darwin areas. On that basis the applicant's submission that the Driver Supermarket meets that criterion of the Guidelines must fail.
44. The applicant also submits that there is a clear public need for a take away liquor licence to be granted to the Driver Supermarket. In support of that submission the Applicant has included three letters from residents supporting the grant of the licence with the review application. In considering the public need criterion it is also necessary to take into account the further considerations set out in the Guideline, namely the density of takeaway liquor venues in the vicinity, the proposed business model and the propensity for alcohol related anti-social behaviour and harm in the vicinity of the proposed application.
45. The delegate determined that the applicant has a sound business plan for the premises, should the licence be granted, and that the personnel of the applicant company have a level of experience and acumen commensurate with the operation of a store licence with a take away liquor authorisation. That fact is clearly demonstrated by the applicant's past and on-going conduct of the business at the licensed Gray Supermarket. I concur with the delegate's conclusion in that regard.
46. Similarly, the delegate determined that none of the formal objections were sufficient to persuade him that the licence application should be refused on the basis of any propensity for alcohol related anti-social behaviour in the vicinity of the Driver Supermarket. As noted by the applicant, the Driver Supermarket has not held a liquor licence for some 16 years with the result any anti-social behaviour in the neighbourhood during that period could not be attributed to the existence of a take away liquor outlet in Driver. Whilst no doubt genuinely made, the submissions of the objectors in that regard are necessarily speculative. I am not persuaded that the potential for alcohol fuelled anti-social alcohol behaviour is any more prevalent in Driver than for any other area in which a take away liquor outlet is located.
47. A further consideration under the Guideline for take away liquor licences is the density of such venues in the vicinity of the Driver Supermarket. The delegate noted that there are now 15 take away liquor outlets in the Palmerston area, an increase from 11 in 2014. As submitted by the applicant, a number of those premises are licensed clubs where take away alcohol is only available for purchase by bona fide members of the clubs and not to members of the general public. I agree that club liquor licences that are authorised to sell takeaway liquor to members

should not be taken into account in assessing the density of take away liquor outlets servicing the general population.

48. Having said that, apart from licensed clubs, there are 12 take away liquor outlets within 5 kilometres of the Driver Supermarket that are open to the general public. Residents of Driver could reach any of those outlets, by vehicle, in less than 10 minutes. Of those premises, four are within two kilometres of the Driver Supermarket with the closest being the Gray Supermarket which is also owned and operated by the applicant Laddmac Pty Ltd. The Gray Supermarket is essentially a small scale suburban supermarket offering take away liquor sales just 1.5 kilometres, or 3 minutes' drive, from the Driver Supermarket. In addition, the major chain liquor stores, BWS Palmerston and Coles Palmerston are located approximately two kilometres from the applicant's premises and can be reached by Driver residents within five minutes by vehicle.
49. In circumstances where an applicant relies on the public need criterion of the Guideline to support the grant of a new take away liquor licence, the applicant bears the onus of presenting cogent evidence and information demonstrating the clearly established need for such a licence. Apart from its own submissions, the only evidence presented by the applicant in terms of public need are the three letters from residents in support of the application. As noted above, the population of the suburb of Driver is in excess of 3,000 residents. Whilst it is not appropriate to assume that the remaining adult population of Driver is opposed to the application it must be stated that a mere three residents in support does not indicate an overwhelming public need for the additional liquor licence.
50. In this instance, for the reasons set out immediately above in respect of the density of take away in the vicinity of the Driver Supermarket, the applicant has failed to demonstrate a very clearly established need for the additional take away liquor licence. For the reasons set out above, this application does not fall within the Guideline for New Takeaway Liquor Licence Applications issued by the former Licensing Commission on 16 December 2014 and therefore must be refused.

Summary

51. The application for a store take away liquor licence lodged by Mr Dallas Mackay on behalf of Laddmac Pty Ltd for the Driver Supermarket satisfies the requirements set out in the *Liquor Act* for the grant of liquor licence of that type.
52. Testimonies and evidence submitted in support of the application indicate that the proposed nominee, Mr Dallas Mackay, is a fit and proper person to hold a liquor licence.
53. The objections lodged in respect of the application are noted, as are the genuine motives and concerns of the objectors, and considered in some detail above and in the delegate decision from which this review arises. In summary, and on the basis of 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.
54. However, having considered the entirety of the application and having reviewed the previous decision of the delegate I am not satisfied that this application meets any of the criteria set out in the Guideline promulgated in December 2014 by the former Licensing Commission for the grant of a takeaway liquor licence. Specifically in response to the submissions of the applicant, I am not persuaded that the licence is to be located in an area that has experienced substantial and recent population increase or that the applicant has demonstrated that there is a very clearly established public need for a take away liquor licence for the Driver Supermarket.

55. For the purpose of certainty, I am also of the view that this application does not meet the criteria set out in the more stringent Guideline issued by me in October 2016.
56. On the basis the application does not meet any of the criteria set out in the December 2014 Guideline, the application must be refused

Decision

57. On the basis of the matters set out above, and in accordance with section 14(2)(a) of the *Licensing (Director-General) Act*, I have determined to affirm the decision of the delegate dated 21 August 2016 to refuse to issue a liquor licence for the premises known as Driver Supermarket located at Lot 61 Driver Avenue, Driver in the Northern Territory, pursuant to section 29(1)(b) of the *Liquor Act*.

Review of Decision

58. 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. The determination of an application for a liquor licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision. 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. For the purpose of this decision, and in accordance with section 120ZB of the Act, the affected persons are the Applicant and the persons who lodged valid objections, as identified above.



Cindy Bravos
Director-General of Licensing

Date: 10 January 2017