

# **NORTHERN TERRITORY LICENSING COMMISSION**

## **REASONS FOR DECISION**

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<b>PREMISES:</b>	<b>Driver Supermarket</b> Shop 4, Lot 1400, Driver Avenue, Driver
<b>APPLICATION</b>	Lyle Alan Mackay Jnr on behalf of Laddmac Pty Ltd
<b>PROCEEDING:</b>	Section 47I of the <i>Liquor Act 1978</i> , Decision on whether objections proceed to hearing.
<b>DATE OF THESE REASONS:</b>	6 February 2004
<b>OBJECTORS:</b>	Ms Undisclosed Objector Mr John Hine & Ms Christina Hine Ms Glenys Tarrant Assistant Commissioner Mark Payne, Northern Territory Police

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1. The applicant, Lyle Mackay Jnr for Laddmac Pty Ltd, has applied for the grant of a liquor licence for the premises known as the Driver Supermarket. The application was advertised in the public notice section of the "Northern Territory News" on Wednesday 26 November and Friday 28 November 2003. The licence conditions sought by the applicant are clearly stated in the notice. The nature of the licence applied for is commonly known as a "take-away" licence, a licence to sell liquor for consumption away from the premises.
2. The advertised application attracted four objections, one of which was lodged on behalf of two signatories.
3. The information placed before me by the Director of Licensing indicates that three of the four objections; specifically those lodged by Ms Undisclosed Objector, Mr and Ms Hine and Ms Tarrant, have been lodged by residents of the neighbourhood. Each has provided a street address in the near vicinity of the applicant's premises as their residential address. The requirements of s.47F (3)(a) are thus satisfied and I am able to consider their objections. The other objector, Assistant Commissioner Mark Payne is a sworn member of the Police and thus his objection satisfies the requirements of s.47F (3)(c) and can be considered.
4. My reading of the letter lodged by Ms Undisclosed Objector, an objector to an earlier application by Laddmac, clearly shows she is unhappy that the applicant having withdrawn the earlier application at an advanced stage of the hearing is able to reapply at an early date thereafter. Her letter does not however clearly indicate that she intended it to be an objection within the terms of s47F of the Act as now amended since Laddmac's earlier application. I note that staff of the

Director of Licensing forwarded Ms Undisclosed Objector's letter to the applicant in accordance with the statutory requirements applicable to letters of objection and that the applicant's legal representative has provided a written response. Therefore I am obliged to treat her correspondence as an objection but must dismiss it as such as it makes no submissions able to be reasonably linked to the available ground of objection set out at s.47F(2). Section 47F(2) clearly states that an objection may only be made on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are located.

5. The objection of Mr & Ms Hine asserts that the amenity of the neighbourhood will be adversely affected by the attraction of itinerants and rowdy elements to the area. The Hines refer to the premises being 100 metres from a primary school and the need for students to travel directly past the premises, presumably in the vicinity of the undesirables they believe will be attracted to the neighbourhood. In my view these elements of the objection lodged by Mr and Ms Hines bear directly upon the amenity of the neighbourhood and thus satisfy the requirements of s.47F(2). The Hines specify a number of other concerns within their letter of objection and while some may be able to be linked to amenity of the neighbourhood, the relevance of such concerns is better left to be determined by the Commission at the substantive hearing of their objection.
6. The objection lodged by Ms Tarrant is presented in two letters. Her letter dated 16 December 2003 clearly states that she objects to this "second application by the Driver Supermarket" and refers to the attached copy of her letter of objection to the "first application". Ms Tarrant maintains her views have not changed since her earlier objection.
7. Although Ms Tarrant's views may not have changed the Act has been amended with the effect that amenity of the neighbourhood is now the only possible ground of objection. I note that Ms Tarrant's resubmitted letter makes no specific mention of amenity or neighbourhood. Nevertheless I am of the view that several of the concerns listed by her, specifically those that refer to broken glass, fighting, abusive language and persons camping near her fence are pertinent to amenity of the neighbourhood and so satisfy the requirements of s.47F(2).
8. Assistant Commissioner Payne objects as a member of the Police Force pursuant to s.47(3)(c). He argues that he is empowered with statutory rights arising from ss.51(8) and (11) to examine witnesses and address the Commission in relation to other matters that are not in my view encompassed within the objection process described in considerable detail by the recent amendments to the Act. As a sworn member of the Police Force, Mr Payne's right to lodge an objection is inarguable. However he is in my view limited at this time to the sole ground contained at s.47F(2). The other matters to which he refers, such as those matters to be considered by the Commission pursuant to Sections 31 and 32 of the Act, are not within my jurisdiction as the member selected by the Chairman pursuant to s.47I to determine whether or not objections proceed to a hearing.
9. A number of the concerns specified by Mr Payne, particularly those contained at paragraph 4 of his objection, are relevant to a consideration of the amenity of the

neighbourhood and I am therefore satisfied to this extent that his objection complies with the requirements of s.47F(2). I do not however, in the circumstances of this application, concur with Mr Payne's definition of neighbourhood. While neighbourhood may safely be regarded as inclusive of the suburb of Driver I do not immediately see it as including the "surrounding suburbs, schools, parklands and bush areas of Palmerston". In my view, such a broad definition will need to be supported by relevant evidence and tested at the hearing of the objection.

10. The applicant's response to the objections is contained in a letter from Mr Peter McQueen of McQueens Solicitors dated 28 January 2004. Mr McQueen addresses each of the objections and while Mr McQueen disputes the various assertions of the objectors there is nothing within his correspondence that might persuade me from a finding that each of the objectors referred to earlier satisfies the requirements of the process described at s.47F.
11. In my consideration of the objections I find that none are frivolous, irrelevant or malicious and that all satisfy the requirements of s.47F(3) as to persons, organisations or groups that may make an objection. Further, I find that each of the objectors with the exception of Ms Undisclosed Objector satisfies the requirements of s.47F(2) as to the proper ground of their objection.
12. All parties should note that this decision is confined to the threshold issue of whether each objection satisfies the requirements of the relevant sub-sections of Section 47F. It is not a judgement regarding the relative merits of the application or the objections; any such judgement is a matter for the Commission in its decision arising from the hearing of the objections that it must now conduct.
13. These reasons are to be forwarded to Mr McQueen for the applicant, to each of the objectors listed at the head of these reasons and to the Director of Licensing.

**Peter R. Allen**

**Member selected by the Chairman pursuant to s.47I (2) of the *Liquor Act 1978*.**