

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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**PREMISES:** DRIVER SUPERMARKET

**APPLICANT:** Laddmac Pty Ltd

**APPLICANT'S NOMINEE:** Janice Dorothy Burke

**APPLICATION:** Application for a liquor licence

**HEARD BEFORE:** Mr Craig Spencer

**DATE OF HEARING:** 23 March 2004  
24 March 2004  
23 August 2004  
6 December 2004  
7 December 2004  
8 December 2004

**DATE OF DECISION:** 19 December 2005

**OBJECTORS:** Assistant Commissioner Mark Payne  
Ms Undisclosed Objector  
Mr John Hine  
Ms Christina Hine  
Ms Glenys Tarrant

**APPEARANCES:** Mr Peter McQueen for the Applicant  
Mr Peter McNab for the NT Police

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### Background

1. This is an application by Laddmac Pty Ltd, nominating Janice Dorothy Burke as its Nominee, for a liquor licence at Driver Supermarket.
2. The Directors of Laddmac Pty Ltd are Lyle Alan MacKay and Dallas Darcy MacKay. Lyle Alan MacKay is referred to as Lyle (Junior) and his father Lyle (Senior). This is of particular significance as will become apparent in due course.
3. The supermarket is located on Driver Avenue, Driver, as part of a block of three (3) shops. The shops are surrounded by residential housing across Driver Avenue and adjacent to the empty block of land alongside the supermarket. At the rear of the shops is McInnis Park which links into and forms part of the drainage system for the area. The area is a wide open parkland area that provides a corridor through

to neighbouring suburbs. On the far side of the park is Driver Primary School.

4. Within approximately a two (2) kilometre radius of the Driver Supermarket, there are nine (9) liquor outlets where liquor can be purchased.
5. Between 1984 and 1999 the supermarket was licensed to sell liquor. As the result of a fire to the premises on 12 April 1999, the premises ceased to operate and sell liquor.
6. It was not until about July 2002 that it resumed trading as a supermarket and has now sought to be re-licensed. This current application is the second application for a liquor licence after the Applicant withdrew the first application.
7. In order for the premises to be re-licensed, the Licensing Commission needs to be satisfied on the balance of probabilities of a number of legislative requirements.

### **Legal considerations**

8. Over recent years and the course of this application, there have been a number of changes to the *Liquor Act*. The date of the second and current application was 14 November 2003, the applicable law is the *Liquor Act* as amended and in force as of 24 January 2003. Subsequent amendments relating to the *Liquor Act* relating to the objects of the Act and public interest matters are not binding on this application and will not form part of this decision.
9. The section of the *Liquor Act* that applies to such applications and is required to be satisfied is:

*Section 32 - Factors to be considered in determining conditions, in particular the following:*

(1) *In considering whether to grant an application for a licence and in determining the conditions of a licence pursuant to section 31, the Commission shall have regard to –*

- (a) *the location of the licensed premises;*
- (b) *the location and conditions of any licensed premises in the vicinity of the premises which are the subject of an application for a licence;*
- (c) *the nature of any business associated with the licence applied for that it is proposed to conduct on the premises in respect of which the application is made;*
- (d) *the needs and wishes of the community;*

- (e) *except where the Commission is satisfied that an applicant for a licence does not propose to conduct any business under the licence applied for, the financial and managerial capacity of the applicant for a licence to conduct any business associated with the licence applied for; and*
    - (g) *any other matter that the Commission thinks fit.*
  - (2) *The Commission may conduct such investigations and cause to be conducted such investigations as it thinks fit in order to inform itself of the matters referred to in subsection (1).*
10. Objectors to the granting of a liquor licence are restricted by Section 47F (2) which requires:

*An objection under subsection (1) 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 or will be located.*

### **History of this application**

- 11. This matter has been spread over a considerable period of time due to the first application being withdrawn, various delays and adjournments. It took nearly seven months for the Applicant's final submission to be presented.
- 12. It should be noted that the submissions by Counsel for the Applicant and the NT Police have assisted greatly and were worthwhile.
- 13. After careful and considerable consideration, it was decided to take a totality approach to determining a decision on this application as the associated history is something that cannot be ignored. For that reason, some of the history is included in order to allow a better understanding of the events and circumstances surrounding this application and referred to or relied on by the Applicant and objectors.
- 14. This is the second application by Laddmac Pty Ltd for a liquor licence for the Driver Supermarket. The first application was initially lodged 17 October 2002 with Mr Lyle MacKay (Senior) as the Nominee. The application was withdrawn in September 2003.
- 15. Lyle MacKay (Senior) is the father of Lyle (Junior) who is one of the Directors of Laddmac Pty Ltd. Robert MacKay is their brother and uncle respectively. He is also the father of Dallas MacKay who is the other Director of Laddmac Pty Ltd with his cousin Lyle (Junior).
- 16. Lyle (Senior) and Robert were formerly the Directors of MacKay Contractors (NT) Pty Ltd who was the Licensee of Gray Supermarket which had a liquor licence.

17. A Receiver was appointed in July 2000 over MacKay Contractors (NT) Pty Ltd.
18. Laddmac Pty Ltd was registered in April 2002 with Lyle (Junior) and Dallas MacKay being the Directors and shareholders.
19. A few months later, July 2002 Laddmac Pty Ltd leased Driver Supermarket. About the same time, Laddmac Pty Ltd started operating the Gray Supermarket which included the liquor licence. According to MacKay Contractors (NT) Pty Ltd, the business name and liquor licence were transferred to Laddmac Pty Ltd around this time.
20. September 2002 a NT Supreme Court writ was issued against MacKay Contractors (NT) Pty Ltd relating to debts.
21. In October 2002, Laddmac Pty Ltd which was now operating Gray Supermarket with a liquor licence submitted their first application for a liquor licence at Driver Supermarket, with Lyle (Senior) nominated as the Manager.
22. November 2002 a second receiver became involved with Gray Supermarket and in December 2002 the Gray Supermarket liquor licence was suspended.
23. Late March 2003 the hearing relating to the first application commenced but was adjourned to a date to be fixed after three days. Subsequent to that hearing, Lyle (Senior) was replaced as Laddmac Pty Ltd's Nominee by his brother's de facto, Janice Dorothy Bruce.
24. April 2003 a second writ was issued, this time against Lyle (Senior), his brother Robert, who were both Directors and Shareholders of MacKay Contractors (NT) Pty Ltd, and now Laddmac Pty Ltd. This writ alleged breach of charges, breach of trust and breach of directors duties.
25. In June 2003, an out of court settlement was obtained in relation to the debts, resulting in Laddmac Pty Ltd having an unsecured loan for \$200,000 to Bendee Pty Ltd.
26. As a result of the settlement, Laddmac Pty Ltd applied to transfer the Gray Supermarket liquor licence to itself from MacKay Contractors (NT) Pty Ltd. Due to it being a transfer, there was little scrutiny a new application would be submitted to.
27. July 2003, Lyle (Senior) and his brother Robert were declared bankrupt by virtue of the first writ.

28. When the first application's hearing resumed in September 2003, the NT Police as an Objector sought to obtain details relating to the financials of Laddmac Pty Ltd. The first application was subsequently withdrawn.
29. The second application was submitted the next month for the Driver Supermarket liquor licence by Laddmac Pty Ltd with Janice Burke still being the Nominee.
30. At the commencement of the hearings relating to this application in March 2004, NT Police as an Objector sought rulings on a number of issues. The then Presiding Member, John Withnall gave "ex tempore" reasons to the various procedural issues raised. These reasons were later published on 2 April 2004.
31. One of the issues ruled on related to the NT Police argument there was a linkage between the consideration of financial and managerial capacity in Section 32 and the Section 47F requirement that objections relate to the amenity of the neighbourhood.
32. Subsequently, the Applicant and the Police reached agreement on a range of issues and the matter was conducted over four days on two separate occasions.
33. Exhibits and transcript of witness evidence from the first application now forms part of this application.
34. The above history is a compilation of material supplied by the Applicant, the NT Police and the exhibits.
35. The first application was part-heard at the time of its withdrawal, before three (3) panel Members former Chair of the Licensing Commission Peter Allen, Member Jill Huck and myself.
36. The second application hearing panel Members consisted of the former Legal Member John Withnall, Member Jill Huck and myself. Sadly, prior to the decision of this matter being handed down, the Legal Member passed away.
37. The resultant effect is this decision reverts to a decision of a single Member. Even though during the course of these applications, conversations have taken place between the various panel Members, this decision is now the sole decision of this Member.
38. Further, as part of an open and transparent process, as it is a decision of one Member, pursuant to Section 51 (10A) of the *Liquor Act*, a party not satisfied with the decision, may apply in writing to the Chairperson within fourteen (14) days for a new hearing. Pursuant to Section 51 (10B) the Chairperson may, if he thinks fit, cause a new hearing to be held before not less than three Members.

### **Period without a licence**

39. The period of time during which liquor has not been available to persons at the Driver Supermarket will be taken to be from the date of the fire when the premises ceased trading until the last day of hearings relating to this second application.
40. The no-sale dates being: 12 April 1999 to 8 December 2004.
41. This no-sale period would appear to be fair, reasonable and agreeable to all parties and not unfairly disadvantage any of the parties for delays in submissions or the decision. It does however acknowledge the delays and time span of the main proceedings.

### **Evidence discussed**

42. The evidence for this application is the result of merged evidence from that provided in the first application and evidence presented during the course of this second application. Some of the first application evidence was subject to additional scrutiny, while other evidence was not challenged or disputed.
43. Rather than review the evidence on a witness by witness basis, the evidence has been reviewed, unless indicated otherwise, more broadly in the context of the overall totality of the application, the relevant legislative requirements and aspects being addressed.

### Location of the licensed premises

44. Two (2) inspections of the Driver Supermarket and surrounds were carried out. On each occasion, there was no obvious evidence of the area being used for camps or drinking.
45. In general terms, the area surrounding the premises including the parkland, was clean and tidy. The open parklands were well maintained. However, it would be fair to say the groups of shops looked tired and in need of some refurbishment.
46. Evidence of the objectors centred on amenity and in particular anti-social behaviour. Their evidence on this was based on their own experiences in the area when the supermarket was previously licensed or what they had seen or experienced at other similar locations. To a much lesser extent, what had occurred in recent times.
47. The observations of the objectors were also supported by some of the Applicant's witnesses who recalled what it was like previously.

48. It would be fair to say there is a general uneasiness about the granting of a liquor licence to any Applicant due to concerns the granting of the licence will have on the amenity of the neighbourhood.
49. The Applicant has endeavoured to alleviate this by addressing the amenity concerns through a range of means, for example a minimum of two (2) staff on at all times liquor is for sale, a no-discount approach to sales, hands on involvement and regular visits to each premises.
50. It would be unfair to the Applicant to not acknowledge in a matter such as this that within my experiences on the Commission, previous employment and living in Darwin and Katherine, I have seen and experienced a considerable amount of anti-social behaviour in and around local shopping centres. At the same time, I am not able to state that I have witnessed such behaviour at neither Driver Supermarket nor Gray Supermarket.
51. Interestingly, one of the objectors did indicated that his work required him to attend all local shopping centres around Darwin and Palmerston. The only shopping centre without anti-social problems was Driver.

*Location and conditions of any licensed premises in the vicinity*

52. With regard to the location and conditions of other licensed premises, there are nine (9) other licensed premises within two (2) kilometres of the Driver Supermarket. These licences cover a range of licences, circumstances, conditions and times when the sale and supply of liquor can occur.
53. In fact, the persons who potentially may purchase liquor from the Driver Supermarket have been utilising alternative suppliers for approximately four and a half (4.5) years, the length of the no-sale period referred to earlier.
54. Applicant provided evidence that they have a policy of two (2) staff members being on site at all times during liquor licensing hours at Gray Supermarket and this would apply at Driver.
55. Lyle (Junior) gave evidence that he would float between the two businesses.
56. The Applicant relied in part on the urban planning design of suburbs which made provision for such shopping centres.

*Nature of any business associated*

57. It is intended that liquor be only part of the range of products supplied at the supermarket which operates as a convenience store.

58. In fact, the objectors were quite supportive of the supermarket and the service it provides. Their concern was with the sale of liquor from the premises.
59. The fit out of the premises clearly indicated it was always intended liquor would be sold at the premises. The lease reflected this in terms of the lease amount. It is further supported by the drastic reduction in rent due to the liquor licence not being granted as yet.
60. Interestingly, the landlord for the Driver Supermarket is also the landlord for Gray Supermarket.
61. The percentage of sales in terms of volume and value projected for Driver, largely based on Gray would appear to be inconsistent with those that have been reported to the Commission in many other matters or industry standards. In fact, the figures provided to the Commission for Gray were not appropriate or adequate to give a true indication of liquor sales.
62. Based on the figures submitted, it raised the question why would the Applicant want a licence for another premises when they are likely to receive such a small return for the large possibilities of difficulties and issues associated with selling and supplying liquor.

Needs and wishes

63. A line of argument presented by the Applicant was the premises was formerly licensed and there is a demonstrated need and wish by the residents for the premises to again be licensed.
64. The Applicants called a number of witnesses to support their case for the Driver Supermarket to be licensed, with the notion of it being a convenience venue to purchase a range of items including liquor.
65. To further support their case, the Applicant produced evidence of a survey conducted door to door of local residents, personally by Lyle Mackay (Junior). There was also an in store petition and letters of support.
66. The objectors also had a petition or letters of support to not have the licence issued. They questioned if there was a real need and wish for the store to be licensed. If there was, they argued there were sufficient other premises in the vicinity to provide the service and licensing this premises was not necessary.
67. The conduct of the surveys, petition and letters of support raised questions of specifics, measurability, accuracy, reliability, bias, validity and objectiveness to be useful in supporting or otherwise the respective cases.

68. In particular, the door to door survey is particularly limited in supporting the Applicants case as it was fundamentally flawed by the Applicant personally conducting the survey and the push / pull marketing nature of it.

Financial and managerial capacity

69. It was originally intended on the first application that this Applicant would be the Licensee with Lyle MacKay (senior) being the nominated Manager. The current nominated Manager, who is the de-facto of Lyle's brother, Robert MacKay, was nominated after both Lyle (senior) and Robert were declared bankrupt in July 2003.
70. One of the difficulties with this matter has been determining the true and actual roles being played by the various individuals associated with this application as opposed to the stated roles, due to the highly integrated roles and relationships of persons with the Directors of the Applicant and the Nominee.
71. Clearly, the underlying tone of the NT Police case has been that a business structure has been created by Lyle (Senior) and Robert to circumvent their bankruptcy restrictions. Their respective sons are participating in operating the structure.
72. The above history, at face, would give rise to a the Police suggestion that the Directors of Laddmac Pty Ltd are fronting the business for their bankrupt fathers and uncles.
73. The problem with that notion is that it is a long bow to then say this will impact on the amenity of the neighbourhood, which is and can be their only grounds of objection. Whilst to conduct their business in this manner may be a breach of other legislation relating to corporations and bankruptcy, it is not a bar in this jurisdiction.
74. There is no doubt that the references for Lyle (Junior) and Dallas are supportive of them, but they are focussed on their past achievements with particular emphasis on sport, not managerial capacity.
75. In terms of financial capacity, the Applicant asserts it has been open and transparent with regard to its financial situation and dealings. Whilst it initially had some reservations in disclosing its financial information, it was due to not wishing its private information being open to all and sundry. This is understandable and reasonable. It has subsequently provided information freely and without reservation, though there is some doubt about the quality of the information.
76. The Applicant states there are no financial restrictions on Laddmac Pty Ltd as it enjoys the support of its landlord and also its main creditor Bendee Investment Pty Ltd who will not seek early repayment.

77. Their accountant has confirmed the support enjoyed and also indicated that their financial position is improving.
78. The Applicant asserted that the manner in which Gray Supermarket has been successfully operated and managed for many years as a convenience store will be basically the same manner in which Driver Supermarket will be operated. This would include having a range of products for sale including liquor, a hands on approach, no discounting or liquor specials.
79. The supermarkets are family owned and operated businesses. This is reflected in that they financially support Lyle (Junior) and his cousin Dallas, Lyle (Senior) and his brother Robert, Robert's de-facto, and other cousins. This in itself indicates that there is a certain level of reliance on these businesses to ensure employment for family members. The granting of a liquor licence would be a significant benefit.
80. On face, Lyle Mackay (Junior) appears to be a young man learning about the operations of supermarkets, even though he has been in and around them for many years.
81. The Applicant asserted that Lyle (Junior) was fortunate to have such a wealth of experience around him to assist him manage the affairs of the business and to draw on, such as his father and uncle, is uncle's de-facto and their accountant.
82. Lyle (Junior) made the point in his evidence that he may seek advice from others including his father and uncle, but it is he who is running the family businesses these days. Both Lyle (Junior) and his cousin Dallas live with their respective fathers.
83. The level of business independence Lyle (Junior) wished to demonstrate was negated to a large degree when he was questioned about operations of the supermarkets. He exhibited a significant lack of knowledge or an over-reliance on his accountant to explain issues.
84. This is of particular concern as Lyle (Junior) gave evidence in December 2004, well over two (2) years after forming the company, taking over the operations of the two (2) supermarkets, signing five (5) year leases for the businesses, going to court and reaching an out of court settlement and taking on a \$200,000 unsecured loan for his business which is totally responsible for, though the debt relates to the activities of his father and uncle.
85. The financial and managerial capacity is something that the NT Police have strongly challenged and questioned. They assert that if the financial and managerial capacity is not satisfactory, this can be translated into inappropriate practices which can affect the amenity of the neighbourhood. Issues of concern include:

- Is the working capital / loan structures adequate?
  - How would Laddmac Pty Ltd repay capital and interest if the Bendee Investments Pty Ltd loan was called in?
  - How would Laddmac Pty Ltd raise additional finance if necessary considering their own accountant indicated banks and other financial institutions would be reluctant to lend money due to the age and inexperience of the Directors of Laddmac Pty Ltd and also their inability to provide security.?
  - Why would the Lessor reduced the rent on a registered and executed lease?
  - Whether Laddmac Pty Ltd's past performance and ability to make interest and capital payments in repayment of the loan indicates a satisfactory financial capacity?
86. Even though Laddmac Pty Ltd has two (2) directors, the financial and managerial capacity has focussed on Lyle (Junior) almost to the exclusion of Dallas. By default, the financial and managerial capacity of Laddmac Pty Ltd is being measured against Lyle (Junior).
87. Further on that point, the Applicant's nominee is Robert MacKay's de-facto Janice Burke and Section 25 (3) states:
- For the purposes of this Act, the manager of the licensed premises nominated by the body corporate shall be deemed to be the person licensed in respect of the premises and the premises shall be deemed to be his licensed premises or the premises in respect of which he is licensed.*
88. It would appear that another key player in the overall management of the licence has taken a back seat, in a similar manner as the other Laddmac Pty Ltd Director, Dallas. Therefore, the burden of financial and managerial capacity is largely falling onto the shoulders of Lyle (Junior).
89. The NT Police asserts that Lyle (Junior) has not demonstrated the level of financial and managerial capacity which is sufficient for someone operating two (2) supermarkets that are selling and supplying liquor. Examples given include:
- Lack of knowledge about staffing matters
  - Not being able to link superannuation payments to the accounts
  - Unable to provide up to date figures from the computer system
  - Necessity to refer to the account to explain basic information about the accounts
  - Whether the inability of Lyle (Junior) to answer basic financial and managerial questions demonstrated the requisite level of understanding and competence for success in the highly competitive retail market?

90. The Applicant's witnesses on financial and managerial capacity when dealing with the issue on a surface level, on face appeared to be credible. However, once deeper questioning and examination occurred, there was a distinct reluctance or willingness by witnesses to give or be forthcoming with information. It was as though the "corporate veil" was lowered to disguise, hide or protect.
91. This reluctance or lack of willingness referred was such as to give a clear perception there was something that the witnesses for the Applicant did not wish to be disclosed as part of this application or their evidence. This perception remained even after the issue of certain documents being classified as confidential had been dealt with.
92. The financial transaction involving Bendee Investments Pty Ltd does raise some serious concerns about how Laddmac Pty Ltd operates. It is an example of where there was a reluctance to fully explain. Laddmac Pty Ltd has been saddled with the full burden of a \$200,000 debt resulting from the writ issued where it was the third named defendant and an out of court settlement reached. Neither Lyle (Senior) or Robert MacKay who were the first and second defendants have assumed any financial responsibility for the debt incurred. An obvious reason would appear to be that the settlement would not have been reached due to their inability to pay and pending bankruptcy. In effect, the two (2) sons have taken on a substantial debt incurred by their fathers using the companies funds.
93. Even more concerning about this transaction is the lack of openness and transparency. Why would an arms-length company such as Bendee Investments Pty Ltd loan Laddmac Pty Ltd \$200,000 when on their own accountants evidence, a bank would not have loaned the money. This was due to the lack of experience, lack of security and the age of the Directors of Laddmac Pty Ltd. The lack of details and a high level of flexibility with regard to repayments is surprising. Even more surprising is the loan is unsecured and there is no documentation for it. Why would another business do this if it was truly arms-length?
94. It is of some concern that the current accountant for Laddmac Pty Ltd who also organised the \$200,000 loan from a relative of hers, is the same accountant that managed the accounts for Lyle (Senior) and Robert MacKay when they operated MacKay Contractors (NT) Pty Ltd. There was a considerable reliance by Lyle (Junior) on this accountant when financial issues were discussed.
95. Another aspect of this application is the lease for the Driver Supermarket premises. It was taken out by the Applicant from 1 June 2002 to 30 June 2007 with a right of renewal. The premises were fitted out with appropriate refrigeration for selling liquor. No application had even been lodged at that time. The rent was \$45,253.56 per annum (including gst). However, that lease has now been drastically reduced by \$30,000 per annum to approximately

\$14,000 per annum as it does not have a liquor licence. This clearly indicates there was an assumption by the Applicant the granting of a liquor licence was a mere formality and may not have taken this application as seriously as many other Applicant's have in the past.

### **Conclusion**

96. In reaching the following conclusions, they have not be arrived at without a considerable amount of time and effort in reviewing the transcript, exhibits and personal notes made during the course of this application.
97. Also an effort has been made to ensure that no unfair or unwarranted bias relating to the withdrawal of the first application is carried over to this application, bearing in mind the legal issues raised and discussed by the NT Police surrounding financial and managerial capacity.
98. Quite clearly, this application has to be determined on its own merits and evidence presented.
99. While the past does not equal the future, it may provide some guidance. The history surrounding this matter cannot nor should be totally ignored, yet it should not be taken to be something it may not be. The issues relating to fit and proper, financial and managerial capacity have been given very careful consideration so as to not unfairly judge the capacity of those making this Application.

### Location of the licensed premises

100. To re-introduce liquor after four and a half (4.5) years based on the no-sale period, is quite a significant step. This is particularly so bearing in mind the evidence from both sides indicating there were problems in the area when it was previously licensed. It is acknowledged that this does not mean that the same will occur should this Applicant become licensed.
101. In considering this aspect of Section 32, there is a linkage to amenity of the neighbourhood. The onus is on the Applicant to satisfy the Commission on the balance of probabilities that the amenity of the neighbourhood would not be impacted if the licence was granted.
102. There is no doubt the Applicant has put forward a strong case but not sufficiently persuasive for the Commission on the balance of probabilities be satisfied the amenity of the neighbourhood would not be affected.

### Location and conditions of any licensed premises in the vicinity

103. Evidence was given of the assortment of licensed premises in the vicinity. The objectors view point being that these other premises

adequately serviced the local residents of Driver. The Applicants view was that other surrounding and Darwin suburbs have such premises, why should the residents of Driver be deprived of the convenience.

104. Again, the Applicant has put forward a sound and reasonable case but has not been persuasive in demonstrating that persons in the area were not already well serviced by the existing outlets.

*Nature of any business associated*

105. Considerable effort was made to compare the various aspects of operations of Gray Supermarket with Driver Supermarket. Whether deliberate or incidental, the role of liquor was downplayed in the Gray Supermarket operations.
106. In fairness to the Applicant, it may well have been the manner in which the evidence was presented that caused a perception of downplaying. Nevertheless, the Applicant is operating comparable businesses, one with liquor and one without liquor and would have been in an ideal position to provide such information.
107. It would have been an excellent opportunity for the Applicant to demonstrate to the Commission a sound understanding of their existing business and the industry as a whole.
108. The Applicant was not persuasive or convincing in addressing this issue.

*Needs and wishes*

109. Whilst there was evidence to an extent along these lines, there is concern about the methodology used and consequently the objectiveness of this evidence provided by both the Applicant and the objectors.
110. The Applicant's survey conducted door to door by Lyle (Junior) was the most recent conducted. While well intentioned, it lacked objectivity as the methodology resulted in the survey pushed or pulled the respondent in a desired direction. The Applicant personally conducting the door to door survey was a fundamental flaw.
111. The overall validity of the surveys by both sides were low and not persuasive either for or against.

*Financial and managerial capacity*

112. The nature of this application and the history relating to it are such that there continues to remain a number of unresolved questions and or concerns. These questions and concerns relate to the family arrangements, working and personal relationships, business structures

and influences. Furthermore, there are some serious questions and concerns relating to information of financial dealings and transactions that arose during the course of this application.

113. There is no doubt that this Applicant was previously named as a co-defendant along with the MacKay brothers in civil proceedings relating to allegations of breaches of charge, breach of trust, breach of director's duties.
114. Lyle MacKay (Junior) appears to be a young man learning about convenience store / supermarket operations. That in itself is part of the concerns as he did not demonstrate he had the capacity without reliance on the accountant or family members to assist. This is an issue that goes to the heart of the requirements and considerations for determining this application.
115. The loan with Bendee Investments Pty Ltd does not appear consistent with normal business transactions or arrangements. As such, it raises serious concerns about the independence, indebtedness and roles of persons associated with the operations of the two (2) supermarkets.
116. The onus is on the Applicant to satisfy the Commission as to the various requirements and considerations pursuant to Sections 28 and 32 which it must apply to a decision for the granting of a liquor licence. The onus is on the balance of probabilities. The Applicant has not been persuasive in its case on this aspect.
117. It should be noted that the Applicant is the current holder of a liquor licence for the Gray Supermarket. This licence was obtained as a result of a transfer process that avoids the type and level of scrutiny this application is subjected to. It is not within the scope of this application to become embroiled in any discussion or debate as to the suitability of the Applicant to have obtained a licence for that business or continue to be a licensee.

#### Witnesses

118. With applications such as this involving competing and vested interests, considerable speculation, opinions and subjectivity about future outcomes and a general lack of objective evidence, credibility of the witnesses plays a key role in determining the merits and evidentiary weighting.
119. Though the evidence of the Objectors while at times was emotional, it was credible. There was general acknowledgement by the Objectors of and for the need to balance the competing interests involved in such an application, both supportive or otherwise of their cause.

120. The majority of the Objectors gave evidence of general support and goodwill towards the Applicant and the operation of the supermarket as it currently operates. Their issue was with the sale and supply of liquor.
121. On the other hand, the concerns of the Objectors were almost dismissed out of hand and considered an over-reaction or exaggeration.
122. The evidence of the witnesses for the Applicant tended to ignore, skim over or avoid obvious points that were negative to their case in favour of pushing the focus onto the positives.
123. The evasiveness of the Applicant's witnesses particularly with regard to financial and managerial issues did not add to their credibility but rather substantially deducted from it and created doubts about the veracity of this application.

### **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.

**Craig Spencer**  
**Presiding Member**