

A/Deputy Director-General (Operations)

Decision Notice

Matter:	Application for a Permanent Variation to a Liquor Licence
Proposed Premises:	Cucina Italian Diner
Applicant:	Cucina Italian Diner Bagot Road Pty Ltd
Objectors:	Ms Zoe Langridge – NT Police Ms Katie Hearn – City of Darwin Ms Sally Graetz – Development Consent Authority
Legislation:	<i>Liquor Act</i> Section 32A
Decision of:	A/Deputy Director-General (Operations)
Date of Decision:	15 August 2016

Background

1. Pursuant to section 32A of the *Liquor Act* (the Act), Cucina Italian Diner Bagot Road Pty Ltd has applied to the Director-General of Licensing for a permanent variation for the premises known as “Cucina Italian Diner”, located at 285 Bagot Road, Coconut Grove, NT 0820.

Current Situation

2. The specifics of the application for permanent variation related to the following condition within the licence:

Change of Licence Authority

3. The current licence was issued under the Authority of a ‘Restaurant’ Licence to allow the sale of liquor for consumption on or at the licensed premises ancillary to a meal.
 4. The current premises comprises of 80% restaurant, and 20% waiting area for clients ordering and collecting takeaway food.
 5. The applicant has applied for an ‘On’ Licence’, and to allow patrons to drink on the premises without a meal by removal of the necessary condition.
 6. The reason for the change of concept is an opportunity to expand their business by allowing members of public to purchase alcohol whilst waiting for a takeaway order and capture the passing trade of people traveling to the airport wishing to have a drink as an alternative to the Airport Terminal. The applicant states they intend to maintain 80% of the premises as a restaurant.
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Public Interest Criteria Pursuant to Section 6(2)

7. The applicant submitted an application in which they provided information about the relevant criteria referred to in section 6(2) of the Act and submitted that the information provided demonstrates the grant of the variation to the licence will be in the public interest.

Advertising and Objections

8. The application was advertised in the NT News on Wednesday, 13 April 2016 and Friday, 15 April 2016, and also by way of a public notice located in a prominent position at the premises from Friday 15 April 2016 until Monday, 9 May 2016.

Criteria of Objections/Submissions

Pursuant to section 47F(2) of the Act an objection to application for grant of liquor licence may only be made on the following grounds:

- (a) *the amenity of the neighbourhood where the premises the subject of the application are or will be located; or*
- (b) *health, education, public safety or social conditions in the community.*

Section 47F(3) states only the following persons, organisation or groups may make an objection under subsection (1)

- (a) *a person residing or working in the neighbourhood where the premises the subject of the application are or will be located;*
- (b) *a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located;*
- (c) *a member or employee of the Police Force acting in that capacity;*
- (d) *a member or employee of the Fire and Rescue Service within the meaning of the Fire and Emergency Act acting in that capacity;*
- (e) *an Agency or public Authority that performs functions relating to public amenities, including health, education and public safety;*
- (f) *a community-based organisation or group (for example, a local action group or a charity).*

Summary of Objections

9. Three (3) objections/submissions were received following the advertising/objection period which concluded on Monday, 9 May 2016. All objectors/objections were determined to be valid pursuant to section 47(2) and 47(3) of the Act.
 - Northern Territory Police
 - City of Darwin
 - Development Consent Authority

Zoe Langridge, Director Strategic Police Division Office of the Commissioner and CEO

10. A summary of the objection was that NT Police did not support the change of Authority from a 'Restaurant Licence' to an 'On Licence' based on the fact it would be highly unlikely that patrons would catch a taxi to the premises prior to heading to the airport for a drink and that the collection of takeaway food is rarely done without a vehicle

Katie Hearn, A/General Manger, Community & Cultural Services City of Darwin

11. Ms Hearn, submits that City of Darwin object on the grounds that the change in Authority may adversely affect the amenity of the neighbourhood and or the health, education, public safety or social condition in the community.

Sally, Graetz, Acting Urban Manager, Development Assessment Services, Development Consent Authority

12. Ms Graetz, submits that Development Consent Authority note that the applicant makes reference to use of the tables at the front of the premises, where patrons can sit and consume alcohol without a meal. The current premises have approval to operate as a restaurant, this does not extend to the outdoor area and additional consent would be required.

Response to objection pursuant to attachment 47G of the Liquor Act

13. The objections/submission was forwarded to the applicant, providing them with the opportunity to respond. No response was received by the applicant.

Summary Assessment of the Objections / Submission

14. The Applicant has operated a liquor licence at Cucina Italian Diner since 7 September 2015, there have been no compliance issues raised during this time.
15. The objections /submissions lodged on behalf of the Northern Territory Police, City of Darwin and Development Consent Authority are all valid and in accordant with the relevant provision of section 47(2) and (3) of the Act.
16. The Cucina Italian Diner is situated on a semi Commercial Estate that is accessed by a service road. The front entrance of the premises overlooks a main road and side building overlooks a driveway. There are no residential houses in the immediate vicinity, or attractions to entice members of the public to sit and admire views from the premises.
17. The applicant submits persons travelling to the airport will stop and use their premises as an alternative to the existing outlets within the terminal. Given the logistics of such an exercise it is unlikely such an outcome is likely.
18. NT Police comment that takeaway food is rarely picked up without a vehicle, or by use of public transport is taken into consideration and accepted as the more likely than not.
19. The waiting time for a takeaway pizza is minimal and there is concern that this could encourage rapid consumption of alcohol.
20. The applicant has not provided any quantifiable data in relation to person wishing to consume liquor without a meal despite having been afforded the opportunity to do so.
21. Whilst acknowledging the good record on the applicant I find that the applicant has not provided sufficient information or details to support the application. I further find that the applicant has failed to demonstrate there is a sufficient public need or requirement for this variation. Further, when provided the opportunity to respond to the objections the applicant has not bothered to prosecute their own argument.

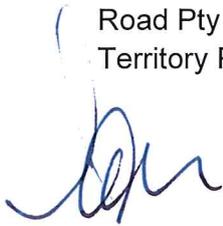
Decision

22. In accordance with section 32A of the Act on the basis of the information provided in respect of the application, and for the reasons set out above, I refuse the application to vary the conditions of the licence for the premises known as Cucina Italian Diner.

Review of Decision

23. Section 8 of the *Licensing (Director-General) Act* prescribes a delegate decision is a decision, under any Act, of the Director-General that is made by a delegate of the Director-General. The Director-General delegated the determination of applications made under Section 32A of the *Liquor Act* by instrument to the person from time to time holding, acting in or performing the duties of the position in the Department of Business specified in Schedule 2 of that instrument. This decision was made by a person referred to in that schedule. Section 10 of the *Licensing (Director-General) Act* provides that an affected person for a delegate decision may apply to the Director-General for a review of the decision. This application for review must be made within 28 days after written notice of the delegate decision is given to the affected person, or within any additional time that the Director-General allows. Section 9 of the *Licensing (Director-General) Act* prescribes an affected person for a delegate decision to be the applicant for the special licence and a person who made a submission, complaint or objection (however described) during the process that resulted in the decision being made.

24. Accordingly, the affected persons in relation to this decision are, Cucina Italian Diner Bagot Road Pty Ltd, Ms Katie Hearn of the City of Darwin, Ms Zoe Langridge of the Northern Territory Police and Sally Graetz of Development Consent Authority.



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