

Northern Territory Licensing Commission

Reasons for Decision

Premises:	www.bestfoodsdarwin.com.au
Licensee:	Bestfoods Darwin Pty Ltd (ACN 093 141 667)
Nominee:	Mr Peter Alderman
Proceeding:	Sec 50(1)(a) Application for Hearing Following Refusal of Licence
Heard Before:	Mr John Withnall (Presiding) Ms Annette Milikins Mr Brian Rees
Date of Hearing:	17 May 2001
Date of Decision:	06 July 2001
Appearances:	Mr Lex Silvester for Applicant

The applicant seeks a store licence for a new neighbourhood supermarket or convenience store at Frances Bay Drive, Tipperary Waters.

There were no objections. The NT police, while not formally objecting to the application, requested a list of conditions be inserted in the licence. Their main concern was with the proposed home delivery aspect.

No other interest in the application was notified to the Commission by any other person or group.

Despite the absence of objections, the Commission initially declined the application without a hearing because of lack of sufficient attention in the application to the aspect of needs and wishes of the community, and in the absence of sufficient detail as to the included proposal to sell liquor online. The applicant then exercised its right to a hearing in the face of that refusal.

At the hearing the applicant accepted the police conditions, and the Commission was satisfied as to the financial and managerial capacity of the applicant. The delay in reaching a decision on the application has arisen from our concern with the aspect of community needs and wishes. The several hundred customer signatures, obtained in a comparatively brief period of time, are indicative of a substantial degree of local neighbourhood support, but the question in our minds which has caused the delay is whether the community whose needs and wishes are to be canvassed by the application should be seen as being more extensive. Given that the applicant proposes to take orders "online" and home-deliver anywhere in Darwin, the concern is that if it is the whole Darwin municipal area that should be seen to comprise the relevant community for the purposes of the application, community support may needed to have been canvassed across a more extensive "catchment" area. We are aware that there is a body of opinion as to the greater Darwin area being already over-serviced by liquor outlets.

However, no such opinion was brought forward in relation to this application. While the Commission has consistently held that the absence of objections is not necessarily to be equated with community support, the lack of objection certainly becomes relevant in terms of the applicant's evidentiary hurdle in persuading the Commission to grant the licence applied for.

At the conclusion of the hearing we believed that were it not for the proposal to also trade online, the store's location, surrounding demographics and residential projections are such as to justify an unobjected liquor licence for what is to be essentially a modestly sized neighbourhood store in a developing neighbourhood. On due reflection, we do not believe that the store's future success with online trading should be apprehended to have the potential to alter that viewpoint. The

applicant seeks a *store* licence as its online vehicle, and it will therefore be mandated that liquor sales must always remain ancillary to general sales, both in terms of the gross turnover figures for liquor as compared to the turnover from general merchandise and also in terms of the shopping environment presented both in the store and on the store's website.

The applicant should be under no illusions in this context: if it cannot demonstrate at any time that over-all it does more business in general grocery lines than in liquor, the licence will be at risk of cancellation.

Our current thinking on internet trading is that it is simply a use of the telephone line to place an order, little different in commercial aspect from picking up the handpiece and ordering by voice. It would seem that any licensed store at the present time could home-deliver an order telephoned to the store, without necessarily being in breach of licence conditions. The real concern is to ensure responsible delivery of the orders, and in that regard all the conditions requested by the police in the present case will be embodied in the licence.

The Commission noted that there was some overlap in the catchment or market area for the applicant's store and that of the proposed Woolner Road development which already has a store licence "in principle". This was addressed to some extent by the applicant's counsel, and the recent personal observations by several members of the Commission of the Woolner Road site, still dormant twelve months after licensing approval, leads us to agree that it seems unlikely that the Woolner Road development could now comply with its "sunset date" for commencement of licensed operation. While such speculation has not been a determinative factor in our present decision, we note that any application by the Woolner Road developer for an extension of time within which to commence trading will now have to encompass the granting of this new store licence. The terms of the Woolner Road approval gave no right or expectation of any extension of the lapse date of the approval.

In the result the application before us is approved. The store licence will issue subject to the following special conditions, most of which the applicant either has already volunteered to accept or will nevertheless be expecting.

1. The operation of the licence and sale of liquor hereunder is to be ancillary to the operation of the premises as a supermarket or convenience store, which is to say ancillary both in terms of gross turnover and in terms of the ambience of the shopping environment presented by the premises and by any website detailing the licensee's wares.
2. The licensee shall sell and promote primarily and predominantly premium quality wines and liquor; no prices shall be anywhere advertised promoted or signposted as being discounted.
3. The licensee shall stock at all times a range of low or "light" alcoholic beverages, with maintenance of price differentiation.
4. Sales of cask wine shall be restricted to premium brands in casks not exceeding two litres; no liquor shall be sold in glass flagons.
5. Sales of fortified wine shall be restricted to premium brands by bottle only; no fortified wine shall be stocked or sold in casks of any size.
6. All employees of the licensee and all other persons on behalf of the licensee directly involved in the service of liquor products to the public, including all drivers and other persons involved in the home delivery of liquor, shall have successfully completed an approved patron care training course. It will be insufficient compliance with this condition that any such person at any time is in the process of undertaking a course, as distinct from having successfully completed it.
7. Delivery of liquor may take place only within licensed hours, only on private property and only to an adult who must appear not to be intoxicated and who shall sign for his or her receipt of the delivery; in no circumstances whatsoever may a liquor delivery be made to a public place or by leaving liquor at any premises where an appropriate adult is not present

to accept and sign for the delivery. All such signed receipts for home deliveries shall be retained by the licensee for a period of twelve months.

8. Any website of the licensee which displays the availability of liquor shall also indicate the full range of the store's products other than liquor, and no delivery of liquor may be made except as a component of an order which includes at least \$20.00 worth of items other than liquor. The minimum figure of \$20.00 may be indexed or increased by the Commission by way of written direction to the licensee at any time.
9. The licensee shall cause to be removed or withdrawn any signage, advertising or promotional material or hoarding which in the opinion of the Commission, notified in writing to the licensee, shall be offensive, excessive, inconsistent with the approved concept of the premises or unacceptable to the Commission in any other way whatsoever.
10. The licensee shall not install or suffer the installation of any seating in the vicinity of the licensed premises.
11. The Commission shall be privy to all records of the licensee that relate to any aspect of the turnover of the store, whether in respect of liquor sales or otherwise, and including all delivery receipts. The licensee shall allow inspection of any and all such records upon request by an Inspector of Licensed Premises or by any other person authorised or delegated by the Commission for the purpose. Such Inspector or other authorised or delegated person may temporarily remove any such documents from the possession of the licensee for the purpose of making such copies as thought fit. The licensee shall not hinder, impede or fail to co-operate with any such officer or person in the performance of a task in pursuance of this condition.
12. In the event that issues may arise in relation to any aspect of the licensee's online operation which the Commission had not envisaged or appreciated at the time of its approval of the application, the Commission may from time to time issue written directions to the licensee in aid of resolving any such unexpected issue, and the licensee shall comply with such directions according to their terms, provided always that except only in the Commission's perception of an emergency no such directions shall be issued without prior consultation with the licensee .

The licence will also contain such standard conditions as may at the time of issue be normally contained in licences known as store authorities (including disclosure of leasing or management agreements, compliance with Health regulations, prohibition against "book-up" etc.).

The applicant has "liberty to apply" in relation to any aspect of the foregoing special conditions.

John Withnall
Presiding Member

6 July 2001