

Your Ref: SMN:DM:190582

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Dear Ms Nicholson

### **APPLICATION FOR THE CONDITIONAL GRANT OF A LIQUOR STORE LICENCE - THIRSTY CAMEL BELDON**

This determination relates to the abovementioned application, which was lodged with the Director of Liquor Licensing (Director) on 26 February 2020, on behalf of your client Nayshon Pty Ltd (Applicant), in respect of premises to be known as *Thirsty Camel Beldon* and situated at 9 Gunter Grove, Beldon.

#### **Decision**

After considering the application and submissions lodged by and on behalf the Applicant, I have decided to refuse the application on the grounds that the Applicant:

- (a) failed to discharge its onus under s36B(4) of the *Liquor Control Act 1988* (Act);
- (b) failed to discharge its onus under s38(2) of the Act; and
- (c) has made the application contrary to the provisions of s68(2a) of the Act.

I have determined this matter under delegation pursuant to s15 of the Act. My reasons for refusing the application follow.

Should the Applicant be dissatisfied with the outcome, it may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.

#### **Reasons for decision**

By way of background, the Applicant submitted that:

- (a) it has operated licensed premises, trading as the *Beldon Tavern*, under tavern licence number 6020020271, at the corner of Gunter Grove and Marmion Avenue, Beldon, since 2012;
- (b) the tavern forms part of the *Beldon Shopping Centre*, which is a Neighbourhood Activity Centre anchored by a large *Woolworths Supermarket* and eight other tenancies, in addition to the tavern; and
- (c) at present, the premises that is subject to the tavern licence wholly encompass the area sought to be licensed under the present application, which is currently the tavern's 'bottle shop'.

To facilitate the conditional grant of the liquor store licence sought, the Applicant originally proposed to:

- (a) redefine the tavern licence to excise the bottle shop from the tavern;
- (b) vary the tavern licence so that it became a tavern restricted licence; and
- (c) apply for the grant of a liquor store licence to re-licence the tavern's former bottle shop as a stand-alone liquor store, capable of being run as a separate and independent business from the tavern.

Following advice from the Director that varying one subcategory of hotel licence under s41 of the Act to another subcategory (i.e. from a tavern licence to a tavern restricted licence) was not considered to be in the public interest, the Applicant concluded that the application for variation was not essential to its desired outcome, that is, the separation of the existing tavern licence into two separate businesses and licences. Accordingly, the application to vary the tavern licence was withdrawn.

According to the Applicant, separation of the bottle shop from the tavern is easily achieved, as each are essentially different departments of the tavern business, with their own dedicated staff and separate and distinct areas. To this end, Adam Broadley, the sole director of Nayshon Pty Ltd stated that:

*"All that is needed to complete separation of the Tavern Section from the Bottleshop is the installation of a dividing wall in the back area of the stock holding area and a new roller door for deliveries for the Tavern. These will only take a day or two to complete."*

The Applicant also disclosed that:

- (a) if the bottle shop is licensed under a separate licence, it would be able to sell off the bottle shop business; and
- (b) Woolworths Group Limited has already expressed an interest in buying the business.

#### **The Applicant's onus under s36B(4) of the Act**

As a starting point, the Applicant acknowledged that the provisions of s36B(4) of the Act applied to the present application as a mandatory consideration, but nonetheless submitted that the 'nature of the Application is not intended to be within the scope of section 36B(4) (as it is essentially the conversion of an existing licence and will not result in a new outlet.)'

As such, the Applicant also submitted that:

*'In short, the Premises is an existing, retail packaged liquor outlet that has been operating for a long time. It is a convenience styled outlet that provides both a browse area and drive through. It currently meets the packaged liquor needs of 2,843 people per week on average. No change to the Premises is proposed if the Application is granted. That is, all aspects of the Premises (such as the design, configuration, manner of trade and target customers) will remain the same.'*

*...in substance the Application is for the reclassification of an existing licence. While the grant of the Application will result in a new liquor licence it will not result in a new or additional retail packaged liquor outlet, nor will there be any change in the number of retail packaged liquor outlets in the Locality.'*

To demonstrate the requirements of consumers for packaged liquor in the locality, the Applicant submitted that:

- (a) the premises has:
  - (i) been in existence for a number of years;
  - (ii) has a well-established pattern of trade; and
  - (iii) currently serves, on average, 2,843 customer per week;
- (b) the premises is catering to the requirements of a proportion of consumers of packaged liquor in the locality by offering a good selection of popular beer, wine, spirits and other liquor products at competitive prices;
- (c) there is a specific requirement for the services and facilities provided by the premises as consumers are choosing to go there instead of other retail packaged liquor outlets in the locality;
- (d) the fact that consumers are choosing to go to the premises instead of other premises indicates that it offers something that is not provided by the other existing outlets; and
- (e) packaged liquor consumers in the locality have a requirement for the premises and the requirement is individual and specific to the premises and therefore is not currently satisfied by the other existing retail packaged liquor outlets in the locality.

Accordingly, the Applicant submitted that the extent to which the requirements of consumers for packaged liquor in the locality is being met by other existing outlets is irrelevant to the application.

I do not accept this submission. As explained by the Director's delegate in *Re BWS – Beer Wine Spirits Inglewood*<sup>1</sup>, from a plain language reading of s36B it is apparent that the:

- (a) provision applies to the grant of a liquor store licence;
- (b) condition within s36B(4) is that the licensing authority must be satisfied that the 'local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in' the relevant locality; and
- (c) evidential and persuasive onus falls upon the Applicant.

Therefore, in order to satisfy the provisions of s36B, it is necessary for an applicant to adduce relevant probative evidence upon which the licensing authority can make findings of fact as to:

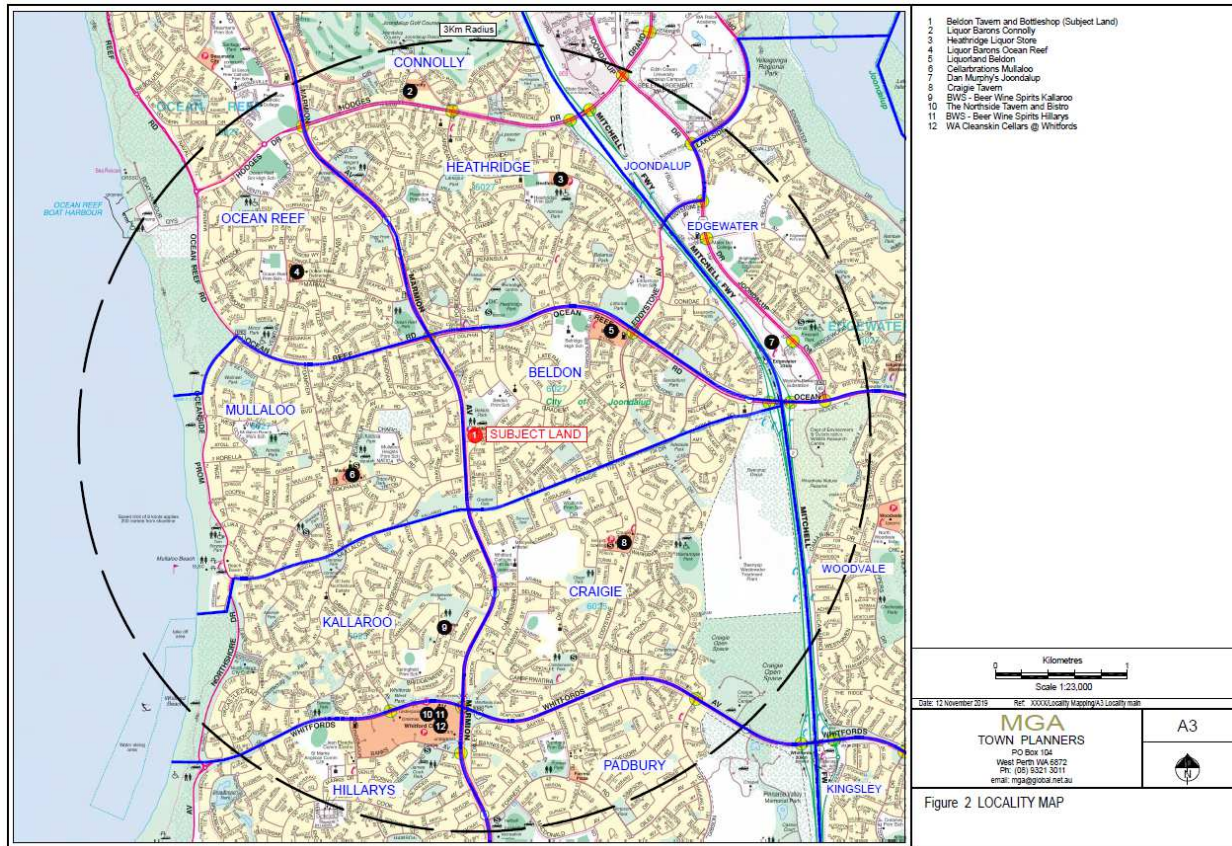
- (a) what the local packaged liquor requirements are; and
- (b) what packaged liquor services are currently provided by the existing packaged liquor premises in the locality.

In my view, the Applicant's submission as to how the application should be considered under the provisions of s36B(4) is not correct. In part, this is because the *Beldon Tavern* will continue to trade under a tavern licence, thereby maintaining the ability to sell packaged liquor. Therefore, the Applicant's proposal clearly seeks the grant of an additional packaged liquor premises in the locality, which would increase the number of packaged liquor outlets in the locality to 15, given that it identified 12 existing packaged liquor premises, inclusive of the *Beldon Tavern*, plus an additional two taverns that do not have a dedicated area for the sale of packaged liquor, but nonetheless are likely to be authorised to sell packaged liquor.

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<sup>1</sup> A775076681, dated 16 June 2020

The existing premises are evenly distributed throughout the locality, as shown in Figure 2 at page 5 to the Applicant's *MGA Town Planning Report* (MGA Report), which I have reproduced below:



The MGA Report also noted some physical barriers influencing the pattern of visitation throughout the locality, including the Mitchell Freeway, the Beenyup Wastewater Treatment Plant and the Parks and Recreation Reserve areas surrounding the Mitchell Freeway, which limit accessibility to the proposed premises for those residents located east of the Freeway.

A comparison of the existing licensed premises in the MGA Report identified the following characteristics:

- (a) *BWS – Beer Wine Spirits Hillary* and *WA Cleanskin Cellars Hillarys* are located within the Whitfords Secondary Activity Centre, which contains two full-scale supermarkets and provides a regional catchment due to its scale and range of shops. However, being located at the southern edge of the locality, the premises are not the most accessible options for residents in suburbs north of Hillarys, Padbury and Kallaroo, if they are only seeking to purchase groceries and packaged liquor;
- (b) *The Northside Tavern and Bistro*, which has a *Bottlemart* branded drive through bottle shop, is also located in the eastern side of the car park for the Whitfords Secondary Activity Centre and is likely to be the closest option for some residents in Kallaroo and Hillarys making single purpose trips to purchase packaged liquor (particularly those that commute along Whitfords Avenue regularly);
- (c) *Heathridge Bottlemart*, *Liquorland Beldon*, *Craigie Bottlemart*, *Cellarbrations Mullaloo* and *Liquor Barons Ocean Reef* are each located in activity centres containing small supermarkets that predominantly service residents in their respective suburban catchments;

- (d) *BWS – Beer Wine Spirits Kallaroo* and *Liquor Barons Connolly* are located in small activity centres where there is no supermarket and therefore service local residents making single purpose trips to purchase packaged liquor;
- (e) *Dan Murphy's Joondalup* is a destination outlet that is not co-located with a supermarket, but presents difficulties of access for the majority of residents in the locality, given its location east of the Mitchell Freeway; which means the premises would be visited sporadically by residents in the locality and only when seeking to select from a greater range and volume of products; and
- (f) the *Beldon Neighbourhood Activity Centre* (where the proposed premises is to be located) contains the only full-scale supermarket west of the Mitchell Freeway and north of the *Whitfords Strategic Metropolitan Centre* and this attribute, combined with its location adjoining Marmion Avenue, make the centre an attractive alternative for residents in suburbs north of Hillarys and Padbury seeking to visit a full-scale supermarket for weekly grocery and packaged liquor purchases.

This comparison establishes that the locality is presently well catered for in respect of packaged liquor premises and that consumers have a wide variety of choice, including drive through facilities, walk-in browse style premises and premises that provide for one-stop or convenience shopping. Also, many of the existing premises sell a broad range of products, brands and styles, similar to those proposed at the subject premises (i.e. popular beer, wine, spirits.)

Additionally, if I accept the Applicant's submissions that the historical support of patrons for the *Beldon Tavern* supports an inference that the proposed liquor store licence would also serve an average of 2,843 customer per week, I cannot accept:

- (a) the assertion that the application merely seeks the reclassification of an existing licence, given that the Applicant's stated outcome is for the separation of the existing tavern licence into two separate businesses and two separate packaged liquor premises (i.e. a liquor store and a tavern<sup>2</sup>); or
- (b) that this evidence establishes a local packaged liquor requirement for two packaged liquor premises to be located adjacent to each other at the *Beldon Shopping Centre*.

Once the licensing authority has made findings as to those matters in s36B(4) (i.e. what the local packaged liquor requirements are and what packaged liquor services are currently provided by the existing packaged liquor premises in the locality), it is then required to make a value judgement as to whether the local packaged liquor requirements can reasonably be met by the existing packaged liquor premises in the locality.

In making that value judgement, I consider:

- (a) the Applicant failed to properly identify what the local packaged liquor requirements are in the locality, other than merely asserting that the bottle shop of the *Beldon Tavern* caters to the requirements of a proportion of consumers of packaged liquor in the locality by offering a good selection of popular beer, wine, spirits and other liquor products at competitive prices;
- (b) there was nothing in the Applicant's evidence to suggest that consumers in the locality cannot readily and easily access packaged liquor of the type proposed to be sold at the premises (i.e. popular beer, wine, spirits); and

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<sup>2</sup> Refer to the definition of packaged liquor premises in s36B

- (c) no submissions or evidence was led by the Applicant on what would be reasonable, in terms of whether the local packaged liquor requirements can be met by the existing 14 packaged liquor premises in the locality, except perhaps for the assertion that *Dan Murphy's Joondalup* was not readily accessible, given its location east of the Mitchell Freeway.

Further, in relation to the *Beldon Tavern* itself, aside from a private commercial decision of the Applicant, I note there was no relevant evidence led as why the Applicant cannot continue to meet the requirements of consumers at the *Beldon Shopping Centre* for packaged liquor at the existing bottle shop, as it has done for many years.

It is also relevant to acknowledge that the redefined *Beldon Tavern* would still be authorised to sell packaged liquor and there would be nothing to prevent the licensee of the tavern from seeking to establish another dedicated packaged liquor outlet. While such an application may be subject to the provisions of s77 of the Act, if the proposed area did not exceed the area prescribed in r14AA of the *Liquor Control Regulations 1989* (regulations), the application may not be subject to the provisions of s77A of the Act (which correspond with the provisions of s36B in respect of applications for alteration of existing packaged liquor premises.)

In my view, the Applicant's evidence does not establish a local packaged liquor requirement for the establishment of anything other than a packaged liquor outlet operating at the premises under the *Thirsty Camel* banner (i.e. it would not support the establishment of an alternative packaged liquor premises, such as a *BWS – Beer Wine Spirits* liquor store.)

I also consider the Applicant's submissions that:

- (a) there is a specific requirement for the services and facilities provided by the *Beldon Tavern*, as established by consumers choosing to go there instead of other packaged liquor premises in the locality; and
- (b) this requirement is individual and specific to the premises and therefore is not currently satisfied by the other existing retail packaged liquor outlets in the locality,

have been somewhat overstated, given that the Applicant only proposes to offer a selection of popular liquor products at competitive prices, which is likely to be similar to those products already offered for sale by many of the other existing packaged liquor premises in the locality.

Finally, I consider that the Applicant's submissions about how the proposed liquor store will provide for the local packaged liquor requirements are also compromised by the proposed sale of the liquor store. This is because the continuation of the 'specific requirement' of consumers for the services and facilities provided by the *Beldon Tavern* (which, according to the Applicant, are not currently satisfied by the other existing retail packaged liquor outlets in the locality (such as those offered by Woolworths Group Ltd at *BWS – Beer Wine Spirits Hillary*, *BWS - Beer Wine Spirits Kallaroo* and *Dan Murphy's Joondalup*)) cannot, on the information before me, be guaranteed following the transfer of the licence to another party. In this regard, it is unknown whether Woolworths Group Limited (or any other purchaser of the business under the liquor store licence) would operate under the *Thirsty Camel* banner in preference to one of their own established retail brands, such as *BWS - Beer Wine Spirits*.

Therefore, when I consider the totality of the Applicant's evidence, I am of the view that it has failed to satisfy me that the existing packaged liquor outlets in the locality, including the *Beldon Tavern* itself, cannot reasonably meet the local packaged liquor requirements. Having found that the Applicant failed to discharge its onus under s36B(4), I refuse the application on this ground.



### The Applicant's onus under s38(2) of the Act

Although I have effectively disposed of the application on the basis of my findings in respect to the Applicant's onus under s36B(4) of the Act, I consider it is also relevant to examine the public interest factors associated with the concept of separating the existing tavern into two packaged liquor premises.

Pursuant to s38(1)(a) of the Act and r9EA of the regulations, an application for the grant of a liquor store licence is a prescribed application for the purposes of s38(2) of the Act.

In this regard, the Applicant bears the onus of demonstrating that the conditional grant of the liquor store licence is in the public interest (refer *Liquorland (Australia) Pty Ltd v Executive Director of Health*<sup>3</sup>; *Seoul Mart City Pty Ltd v Commissioner of Police*<sup>4</sup>.) Further, the Applicant's onus under s38(2) cannot be discharged by mere assertion and therefore any assertions or opinions must be supported by an appropriate level of evidence.<sup>5</sup> In my view, the public interest in this matter is complicated by the fact that the public interest associated with catering to the requirements of consumers for liquor and related services, including the sale of packaged liquor, is already being met at the premises by the operation of the *Beldon Tavern*.

The application was supported by a Public Interest Assessment (PIA), the MGA Report; a *Health and Crime Statistics Report* and the statement of Mr Broadley. Together, these documents provided information on the proposed operation of the premises; the demographic profile of the surrounding locality; the existing licensed premises and existing rates of alcohol-related harm in the area.

Reasons provided in support of the application included:

- (a) the Applicant wants to separate the business conducted under the tavern licence at the *Beldon Tavern* into two separate businesses and licensed premises, so that it can upgrade and improve the on-site consumption areas of the tavern by selling off the business under the new liquor store licence;
- (b) other than the proposed separation, all aspects of the *Beldon Tavern* (such as the design, configuration, manner of trade and target customers) would remain the same; with the same manner of trade at the proposed premises as has been in existence since 2012, i.e. the provision of a good selection of popular beer, wine, spirits and other liquor products at competitive prices under the Thirsty Camel brand, which is a well-established and reputable retail liquor brand that operates throughout Australia;
- (c) the premises is well designed and laid-out:
  - (i) products are displayed by product category with clear signage and labels to enable customers to easily navigate the store and find what they want;
  - (ii) a large selection of already chilled products in refrigerated cabinets are provided; and
  - (iii) the customer service desk is located next to the entrance of the store to ensure the store and the drive through area can be controlled and supervised at all times;

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<sup>3</sup> [2013] WASC 51

<sup>4</sup> LC 27/2014

<sup>5</sup> *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*, LC 16/2015

- (d) although the application is for the grant of a new licence, in substance it is for the reclassification of the existing licence, not for the introduction of a new licence, with the fundamental point being that the premises is an existing retail packaged liquor outlet that has successfully traded for decades; and
- (e) given this unique scenario, many of the usual public interest factors that would apply to an application for a grant of a new liquor store licence simply do not apply or are not relevant.

With respect to these assertions, the application before me does not form part of the suite of three applications that were anticipated in the PIA (i.e. applications for the redefinition of the tavern licence, variation of the tavern licence to a tavern restricted licence and grant of a new liquor store licence.) As such, many of the Applicant's assertions in the PIA are now factually incorrect, such as the statements that the application does not seek to introduce a new packaged liquor licence into the locality or that many of the usual public interest factors that would apply to an application for a grant of a new liquor store licence do not apply or are not relevant.

Clearly, the *Beldon Tavern* will continue to trade under a tavern licence that authorises the sale of packaged liquor, which is a fact that is contrary to the Applicant's claim that the application will not equate to the grant of an additional packaged liquor premises in the locality. Therefore, in my view, the provisions of ss5, 38(2) and 38(4) of the Act are all relevant and applicable to this application.

After observing this oversight in the Applicant's approach, I wrote to it on 10 June 2020 to *inter alia* afford it the opportunity to lodge further evidence or written submissions in support of the application or to otherwise demonstrate that the application was in the public interest, taking into account the objects of the Act as provided in s5, the matters set out in s38, together with those matters set out in ss36B and 68 of the Act.

It is unfortunate that the Applicant did not avail itself of this opportunity to rectify the assumptions underpinning its previous submissions and instead decided to submit an additional statement by Mr Broadley, which simply pointed out that there are a number of examples in the Perth Metropolitan Area 'where there is a tavern within close proximity to a liquor store, with the tavern and liquor store businesses operating under separate liquor licences' and with many of these licences being located in small shopping centres, similar to the *Beldon Shopping Centre*.

In my view, Mr Broadley's statement did little to address the shortcomings of the PIA or to otherwise address the public interest considerations associated with the grant of a liquor store licence, as outlined by Buss JA in *Woolworths Ltd -v- Director of Liquor Licensing*<sup>6</sup> (*Woolworths v DLL*). Further, the fact that there are many examples of liquor stores granted within a shopping centres is not particularly germane to the application at hand.<sup>7</sup>

In terms of consumer evidence, the Applicant submitted that:

- (a) the premises is 'an existing, successful retail packaged liquor store that has operated for decades and has a regular, established pattern of trade and client base, serving almost 3,000 customers per week on average'; and

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<sup>6</sup> [2013] WASCA 227

<sup>7</sup> Particularly given recent introduction of s36B into the Act, which seeks to prevent the proliferation of packaged liquor outlets, including small and medium sized outlets and to enable the licensing authority to manage the number of packaged liquor outlets where sufficient outlets already exist within a locality (refer the Explanatory Memorandum and Second Reading Speech on the introduction of the *Liquor Control Amendment Act 2018* (*Western Australian Parliamentary Debates* (Hansard), Legislative Assembly, 20 February 2018 p324-325))



- (b) these 'factors in themselves demonstrates the Premises caters to the requirements of consumers.'

In my view, the Applicant's evidence (i.e. that the existing tavern has almost 3,000 customers per week) supports an inference that those customers may also choose to patronise the proposed liquor store. However, I do not consider that the historic consumer support of the *Beldon Tavern* demonstrates a public interest or consumer requirement for the establishment of a second packaged liquor premises at the *Beldon Shopping Centre* or for two packaged liquor premises to be located adjacent to each other there.

Given the Applicant's assertions that no change is proposed to the way in which the tavern currently operates and how it is proposed that the tavern and liquor store will operate together, I have struggled to identify any public interest benefits associated with the application. This is because the proposed liquor store will merely replicate the packaged liquor services currently provided by the *Beldon Tavern* and there has been no explanation, submission or evidence led by the Applicant to:

- (a) suggest that it is failing to cater to the requirements of consumers under the existing bottle shop of the *Beldon Tavern*;
- (b) indicate that consumers are unhappy with the packaged liquor service provided by the Applicant at the existing bottle shop of the *Beldon Tavern* (and existing customer numbers of almost 3,000 per week would suggest they are not); or
- (c) suggest that it will in some way be better able to cater to the requirements of consumers for packaged liquor and related services under the proposed liquor store licence than it has done under the tavern licence.

I also fail to appreciate the motivation behind the application and consider it illogical for the Applicant to expend resources in the:

- (a) construction of a wall between the tavern and the existing bottle shop facility;
- (b) the purchase and installation of a new roller door for the tavern; and
- (c) payment:
  - (i) of application and associated fees with the lodgement of multiple applications;
  - (ii) for the preparation of legal submissions; and
  - (iii) of two annual licence fees each year,

for no discernible difference in the overall manner of trade or other financial or commercial advantage.

Alternatively, I consider that the application is only plausible if consideration is given to the Applicant's disclosure that:

- (a) if the bottle shop is licensed under a separate licence, it would be able to sell off the bottle shop business; and
- (b) Woolworths Group Limited has already expressed an interest in buying the business.

As such, it seems clear to me that the application is predicated on the Applicant obtaining a liquor store licence and then selling the business under that licence to a third party. However, the potential sale of the liquor store is a private commercial interest between the parties and is not relevant to the public interest matters for the grant of a liquor store licence. As previously noted by the licensing authority, the private interests of an applicant do not equate to, and should not be confused with, the public interest.<sup>8</sup>

In **Liquorland South Bunbury**<sup>9</sup> the Liquor Commission observed that the proper development of the liquor industry:

*'is not synonymous with the unrestricted expansion of liquor outlets to satisfy a desire... for a relatively insignificant or inconsequential modification or improvement to the level of convenience. The long term interests of liquor industry are best served by a controlled development of the industry having regard to public perceptions of the industry and the overall health and well being of the community.'*

While this observation related to the desire on the part of some consumers for liquor or liquor related services, I think it is also applicable to the desire of some applicants who seek the grant of a licence where the benefits associated with the application would be marginal (refer **South Freo Fresh Pty Ltd v Commissioner of Police & Others**<sup>10</sup> (**Freo South Fresh**)). In my view, there would be no discernible public interest factors associated with whether the sale of packaged liquor at the premises occurred by a stand-alone liquor store or by the bottle shop of the *Beldon Tavern*. Therefore, the benefits associated with the application are marginal, if that.

The Applicant also asserted that the question of the proper development of the liquor industry was not relevant to the present application, because the premises is an existing, trading retail packaged liquor outlet that complies with local planning requirements and is appropriate in its current location, whereas I consider the separation of one premises (A) into two premises (A) and (B), to provide the same services as (A) in the same building that (A) used to conduct business, is directly related to the proper development of the liquor industry.

In my view, the proper development of the liquor industry must now be considered in conjunction with the provisions of s36B and is equally concerned with:

- (c) catering to the requirements of consumers; and
- (d) preventing the proliferation of packaged liquor outlets across the State.

Therefore, rather than merely asserting that the proper development of the liquor industry was not relevant to the present application, the Applicant should have undertaken a rigorous assessment of whether its proposal to split one packaged liquor outlet into two adjacent packaged liquor outlets would have any negative impact on the proper development of the liquor industry, particularly given that the Government has sought to create a direct restraint on the grant of new liquor licences that authorise the sale of packaged liquor through the insertion of s36B into the Act to minimise the adverse impact that packaged liquor outlets can have on the community.<sup>11</sup>

While the Applicant made a number of bare assertions about the benefits associated with the grant of the application, it has not tendered any evidence to support those assertions. In determining applications under the Act, the licensing authority must evaluate the evidence before it and make findings and draw conclusions from the evidence, including by inference, wholly or partly, from notorious facts arising from the application in the context of the relevant provisions of the Act, the evidence and any submissions made by the parties.

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<sup>8</sup> Refer **Seoul Mart City Pty Ltd v Commissioner of Police** (LC 27/2014) and **Harold Thomas James Blakely v Director of Liquor Licensing** (LC 44/2010)

<sup>9</sup> LC 18/2015

<sup>10</sup> LC 13/2020

<sup>11</sup> refer Explanatory Memorandum for the *Liquor Control Amendment Act 2018*

Accordingly, I find little to no public benefits associated with the application, outside of the obvious consumer requirement for the continuation of packaged liquor sales by the existing customers of the tavern's bottle shop (which would, in all likelihood, transpose to the proposed liquor store.)

Conversely, I consider there are risks associated with the co-location of two packaged liquor premises together and note that in **South Freo Fresh**, the Liquor Commission accepted 'that an increase in the availability of packaged liquor is associated with increased harm or ill-health, both to alcohol consumers and others impacted by alcohol use...'

In my view, the establishment of the proposed liquor store adjacent to the *Beldon Tavern*, would present similar concerns and raise similar questions. Relevantly, I have noted the Applicant's Health and Crime Statistics Report compared crime and health data in the locality against the North Metropolitan Statistical Subdivision and the State rate, which demonstrated that the number of total recorded alcohol-related assaults in the locality (37.8%) was higher than in the North Metropolitan SSD (33.8%) (notwithstanding that it was also lower than the corresponding State rate (45.2%)). As such, I would have preferred to see the Applicant undertake a more rigorous public interest assessment, including evidence that it had considered whether:

- (a) the operation of two packaged liquor premises side-by-side would have any impact on the total recorded alcohol-related assaults and other health data in the locality; and
- (b) the grant of the present application, which would see the total number of packaged liquor premises in the three-kilometre locality increased to 15, poses any additional risks of increased alcohol-related harm or ill-health in the locality.

Finally, while I acknowledge a public interest in licensees seeking to improve their licensed premises, I do not think these considerations have any bearing on the public interests consistent with an application for the grant of a new licence<sup>12</sup> (refer **Woolworths v DLL**.) In my view, any possible future improvements to the *Beldon Tavern* have little or no relevance the determination of the present application.

Therefore, based on the evidence and submissions of the Applicant, I have concluded that the application has been motivated by the Applicant's own private financial interests in wanting to separate the business conducted under the tavern licence at the *Beldon Tavern* into two separate businesses and licensed premises and then to on sell the business under the liquor store licence for its own commercial advantage, which is not a relevant public interest consideration. The grant of the liquor store licence is a pre-requisite for this proposal, given that it is not possible for the licensee of a tavern licence to sell-off the authority conferred by the tavern licence to sell packaged liquor.

I am also satisfied that there has been no evidence lead by the Applicant to demonstrate, or from which I could infer, that the grant of the application will further any of the objects of the Act. In this regard, the Applicant did not lodge any evidence from consumers in the locality for the grant of a new liquor store licence selling liquor under either the Thirsty Camel banner or one of the liquor retail brands operated by a third party, such as Woolworths Group Limited.

Accordingly, I also refuse the application on the grounds that the Applicant has failed to discharge its onus under s38(2) of the Act. In my view, refusing the application would:

- (a) promote the regulation of the sale, supply and consumption of liquor, consistent with object 5(1)(a); and

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<sup>12</sup> Although they may be more relevant to applications associated with improving existing licensed premises, such as those contemplated by s77 of the Act

- (b) be consistent with the proper development of the liquor industry in object 5(1)(c) when read in conjunction with the provisions of s36B(4) of the Act.

**The provisions of s68(2a)**

Finally, s68(2a) of the Act provides that an application for the grant of a licence may be made only by, or on behalf of, the person or persons wishing to carry on business under the licence after it is granted.

Despite disclosing that:

- (a) one of the primary reasons in support of the application is to allow the Applicant to separate the business conducted under the tavern licence at the *Beldon Tavern* into two separate businesses and licensed premises, so that it can upgrade and improve the tavern premises by selling the business under the liquor store licence; and
- (b) Woolworths Group Limited has already expressed an interest in buying the business under the liquor store licence,

the Applicant maintained that if the present application is approved, it would be the person carrying on the business of the liquor store after the licence is granted, regardless of its ultimate goal of selling off the business under the liquor store licence.

With respect to the Applicant's submissions, I do not find this to be a credible assertion. In my view, the application has been contrived to sell off the liquor store licence to a third party, to raise capital for the Applicant. In fact, I consider that the application only makes sense if it is directed to the Applicant selling off the liquor store business to another party. In my view, the veracity of this matter is confirmed by the fact that a third party was interested in purchasing the liquor store licence before the application for the grant of the liquor store was even lodged, as disclosed in the Applicant's PIA.

This also suggests to me that:

- (a) either the Applicant had spruiked the idea of selling the potential liquor store licence to at least one other party; or
- (b) the application was motivated by the interests of the third party in seeking to establish a packaged liquor premises in the locality via means other than seeking the grant of the licence itself.

Therefore, I also refuse the application on the basis that it is contrary to s68(2a) of the Act, in that the application has not been made by, or on behalf of, the person wishing to carry on business under the licence after it is granted.

Yours sincerely

  
Brett Snell  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

8 July 2020

cc: Liquor Enforcement Unit