

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: LIQUORLAND (AUSTRALIA) PTY LTD

OTHER PARTIES: COMMISSIONER OF POLICE (INTERVENOR)

PREMISES: LIQUORLAND MELVILLE

PREMISES ADDRESS: SHOP 3 & 3A, MELVILLE PLAZA SHOPPING CENTRE, 380 CANNING HIGHWAY BICTON

APPLICATION ID: A000230152

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 04 DECEMBER 2017

Introduction

- 1 This is an application by Liquorland (Australia) Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be located at the Melville Plaza Shopping centre, 380 Canning Highway, Bicton. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 Pursuant to s 69 of the Act, the Commissioner of Police (the Commissioner) lodged a notice of intervention.
- 3 The application will be determined on the written submissions of the parties as permitted under ss 13 and 16 of the Act. Further, this decision has been prepared, and should be read, in the context of a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.¹ The evidence and submissions of the parties are briefly summarised as follows.

The applicant's proposal

- 4 By way of background, the applicant explained that it opened Liquorland Palmyra in February 1995 at 367 Canning Highway, Palmyra. In 2006, the store relocated to premises next door at 369 Canning Highway, Palmyra. In 2016, the applicant entered into discussions with the owners of the Melville Plaza, with a view to removing the licence across the road into a smaller store inside the Melville Plaza and adjacent to the Coles supermarket. However, during this negotiation process, and before the removal of the licence could be determined, the applicant's lease on the liquor store premises expired resulting in the suspension and cancellation of the licence.

¹ Refer s 16(7) of the Act.

- 5 Effectively, this application for the grant of a new licence is to facilitate what was envisaged under the proposed removal of the Liquorland Palmyra licence into Melville Plaza.
- 6 The applicant lodged a Public Interest Assessment (PIA) to support its application. The PIA contained information on:
 - the nature of the business to be conducted under the licence;
 - redevelopment and refurbishment of the Melville Plaza and Coles supermarket;
 - the locality surrounding the proposed liquor store;
 - social impact on the local community; and
 - existing outlet density.
- 7 In addition to the PIA, the applicant also provided the following:
 - a planning and amenity analysis report prepared by Planning Solutions;
 - a telephone and intercept survey conducted by Data Analysis Australia Pty Ltd; and
 - a social impact and amenity audit prepared by Bodhi Alliance.
- 8 In summary, it was submitted that:
 - Liquorland Palmyra was a successful liquor store for over 20 years, located approximately 100m south of Melville Plaza. On average, 1150 customers attended Liquorland Palmyra per week;
 - the proposed liquor store will be adjacent to a Coles supermarket and will provide visitors to Melville Plaza with a convenience and one-stop shopping experience;
 - Liquorland Melville will preserve shopper choice and convenience in and around the vicinity of Melville Plaza and the overall effect on the amenity of the locality would be positive and low impact;
 - it can be anticipated that a lot of former Liquorland Palmyra customers will prefer to shop at Liquorland Melville. In addition, it can be anticipated that a percentage of the 2.25 million visitors per annum to Melville Plaza will prefer to shop at Liquorland Melville for reasons of convenience;
 - the substantial refurbishment and redevelopment of Melville Plaza and the Coles supermarket will enhance the already high level of amenity; and
 - based on the social benefits of convenience, quality, choice, preservation of shopper choice and additional retail services that the proposed liquor store will provide, there is a net community benefit for residents of the locality.

The intervention by the Commissioner

- 9 The Commissioner was not opposed to the grant of the licence; however, the purpose of the intervention was to provide information to assist the licensing authority in making an informed decision in respect of the application.
- 10 The Commissioner provided details of the existing packaged liquor outlets in the locality. Presently, there are nine outlets permitted to sell packaged liquor in the area, with three

premises located within one kilometre of the applicant's premises, which includes two 'destination' outlets (Dan Murphy's Bicton and First Choice Liquor Bicton).

- 11 The Commissioner also submitted that the applicant's survey data does not provide evidence of liquor products or services not already being catered by either Dan Murphy's or First Choice Liquor and there is no evidence of an unmet requirement for liquor products not available in the locality. According to the Commissioner, 79% of telephone respondents and 74% of intercept survey respondents used Dan Murphy's on the same trip when using Melville Plaza. For first Choice Liquor, the figures were 58% of telephone respondents and 34% of intercept respondents respectively. The Commissioner submitted that if either Dan Murphy's or First Choice Liquor were not already meeting consumer requirements within the locality then these figures would be significantly lower.
- 12 The Commissioner noted that the survey data does not reflect strong support for the application; with only 29% of respondents to the telephone survey supporting the application and 43% of intercept respondents.

Legislative and legal framework

- 13 In determining this application, I have been guided by the following legal principles.
- 14 An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest.² An applicant must therefore adduce sufficient evidence to discharge this burden.
- 15 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act.³
- 16 An intervener carries no onus to establish their assertions of fact or opinion⁴.
- 17 The factual matters which I am bound to consider when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5.⁵
- 18 The primary objects of the Act are:
 - to regulate the sale, supply and consumption of liquor;
 - to minimise harm caused to people, or any group of people, due to the use of liquor; and
 - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

² Refer s 38(2) of the Act.

³ **Water Conservation and Irrigation Commission (NSW) v Browning** (1947) 74 CLR 492; **O'Sullivan v Farrer** (1989) 168 CLR 210; **Palace Securities Pty Ltd v Director of Liquor Licensing** [1992] 7WAR 241; and **Re Minister for Resources: ex parte Cazaly Iron Pty Ltd** (2007) WASCA 175.

⁴ **Re Gull Liquor** (1999) 20 SR (WA) 321.

⁵ **Woolworths v Director of Liquor Licensing** [2013] WASCA 227.

19 The secondary objects of the Act are:

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

20 The licensing authority is also entitled (but not bound) to consider the factual matters set out in s 38(4) of the Act as part of the public interest considerations.⁶

21 In the conduct of proceedings under the Act, the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority should also act without undue formality, is not bound by the rules of evidence and makes its determination on the balance of probabilities.⁷

22 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.⁸ However, it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.⁹

23 Section 33(1) provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest.

Determination

24 The applicant seeks to establish a convenience style liquor store within the Melville Plaza Shopping Centre. The Commissioner of Police intervened in the application to provide evidence to assist the licensing authority in making an informed decision.

25 As pointed out by the Commissioner, the applicant's survey data does not reflect overwhelming support for the application, however, there are other factors, in my view, which weigh in favour of the grant of the application:

- Liquorland Palmyra, which was located about 100m away, operated for over 20 years before its recent closure, and serviced over 1,000 patrons per week;
- Melville Plaza is undergoing substantial refurbishment and redevelopment and has over 2.25 million visitors per annum;
- in *Woolworths* *supra*, Buss J noted that it is a notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people;

⁶ *Woolworths* *supra*.

⁷ Refer s 16 of the Act

⁸ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

⁹ *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

- the report by Data Analysis Australia suggests that the proposed liquor store will be well patronised, albeit larger or more specialist requirements are likely to be met by the Dan Murphy's or First Choice stores;
 - the locality surrounding the proposed liquor store does not experience above average rates of alcohol-related harm; and
 - the Bodhi report states that the locality surrounding the proposed liquor store is relatively advantaged in terms of its socio-economic profile, albeit with some small pockets where the community is less affluent.
- 26 When these facts are taken into consideration, I find that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act. There is nothing in the evidence before me to suggest that the grant of the application poses an unacceptable risk to the community and therefore there does not appear to be any tension with the harm minimisation object of the Act.
- 27 I am satisfied that the applicant has discharged its onus under s 38(2) of the Act and the grant of the application is in the public interest. A liquor store licence is therefore conditionally granted to the applicant subject to the following:
- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - (b) compliance with the *Local Government Act 1995*, *Health (Miscellaneous Provisions) Act 1911* and any written law relating to the sewerage and drainage of these premise;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 21 March 2017.
 - (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to applicant wishing to trade under the licence;
 - (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
 - (f) the applicant seeking confirmation of the grant on or before **3 December 2018** pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licenceTrading hours

The permitted trading hours are those prescribed in s 98D of the Act.

Trading

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

CCTV

The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing. Images recorded via the video surveillance system must be retained for 28 days (or such period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the police or other persons authorised by the Director.

Lockable glass cabinets

All spirits and alcohol equal to or higher than nineteen per cent (19%) alcohol per volume is to be displayed behind lockable glass cabinets.

Tasting condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

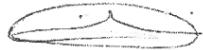
- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the *Food Act 2008* at all times.
- (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
 - (ii) Beer – 100 mls
 - (iii) Spirits – 15 mls.
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

Compliance with harm minimisation policy

The licensee is to have a House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

- 28 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.

- 29 The applicant is reminded that trading ***may not*** commence without the prior written approval of the licensing authority.
- 30 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING