

DECISION OF DIRECTOR OF LIQUOR LICENSING

LICENSEE: LIQUORLAND (AUSTRALIA) PTY LTD

PREMISES: LIQUORLAND MARGARET RIVER

PREMISES ADDRESS: TENANCIES 3 AND 4, MARGARET RIVER SHOPPING CENTRE, 132 BUSSELL HIGHWAY, MARGARET RIVER

LICENCE NUMBER: 6030145590

NATURE OF APPLICATION: APPLICATION FOR GRANT OF AN EXTENDED TRADING PERMIT (ONGOING HOURS)

APPLICATION ID: A000183837

DATE OF DETERMINATION: 25 NOVEMBER 2015

- 1 On 27 July 2015, application was made by Liquorland (Australia) Pty Ltd (“the Licensee”) for the grant of an extended trading permit (“ETP”), pursuant to s 60(4)(g) of the *Liquor Control Act 1988* (“the Act”), in respect of premises known as *Liquorland Margaret River* and situated at Tenancies 3 and 4, Margaret River Shopping Centre, 132 Bussell Highway, Margaret River.
- 2 The application sought approval to trade on Sundays between the hours of 10 a.m. and 7 p.m. and was advertised in accordance with instructions issued by the Director of Liquor Licensing (“the Director”), which resulted in a notice of objection being lodged by Regal Bay Enterprises Pty Ltd (“the Objector”), the holder of a hotel licence issued in respect of premises known as the *Margaret River Hotel*.
- 3 To give effect to the provisions of s 16(11) of the Act, a document exchange was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case.
- 4 Pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties.
- 5 In order to support its application, the Licensee lodged a Public Interest Assessment (“PIA”) and other submissions, including a report prepared by Bodhi Alliance entitled *Sunday Trading Amenity Impact Report – Margaret River* and a report prepared by Data Analysis Australia (“DAA”), entitled *Survey Concerning the Application for an Extended Trading Permit for Liquorland Margaret River, June 2015* (“DAA Report”).
- 6 Accordingly, the case of the Licensee is that Sunday trading at the Store would provide a service, including (but not limited to) one-stop shopping convenience in conjunction with grocery and other shopping at the Margaret River Shopping Centre, which is not presently enjoyed by consumers in the locality on Sundays.

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- 7 In this regard the Licensee submitted that the DAA Report noted that when asked whether trading at the store on Sundays would be:
- (a) less convenient;
 - (b) as convenient; or
 - (c) more convenient,
- than the current packaged liquor options, the most popular response of consumers was that it would be 'more convenient' (43.2%) and this number increased to 93.2% when only respondents who support the Application were considered.
- 8 Accordingly, the Licensee concluded that the application was supported by a majority of respondents to the DAA surveys and submitted that this level of public support:
- (a) indicates a desire for more choice of packaged liquor outlets on Sunday; and
 - (b) provides a cogent public interest reason for granting the application, particularly given that 52.4% of all respondents to the DAA surveys indicated that they sometimes shop for packaged liquor on a Sunday.
- 9 The Licensee further submitted that its licensed premises can be distinguished from others in the locality, due to the fact that no other licensed premises provides the same range of products or type of service as is offered by *Liquorland Margaret River*, given that it stocks a wide variety of packaged liquor, including wine from regions outside of Margaret River, which are not available elsewhere in the locality.
- 10 The Licensee also submitted that:
- (a) the ability to purchase packaged liquor on Sundays, particularly in conjunction with other shopping, is now commonplace within Western Australia, including in major regional tourist centres such as Mandurah and Dunsborough and that a commensurate service is to be expected at a shopping centre in a regional centre servicing a large residential and tourist catchment, such as Margaret River; and
 - (b) the policy underlying the current prohibition against non-metropolitan liquor stores trading on Sundays, particularly the preservation of hotels in country towns, reflected in the 2006 second reading speech is outdated and does not reflect current consumer expectations, which is demonstrated by the proposed changes to the Act to allow liquor stores in major regional areas to trade on Sundays.
- 11 In conclusion, the Applicant submitted that its evidence shows that there is significant support for the Store to open on Sundays. The survey results establish that there is a consumer requirement and demand for a further outlet in the Locality trading on Sunday, providing diversity and choice, and that the Store will enjoy substantial patronage.

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- 12 The objection by Regal Bay Enterprises Pty Ltd is made on the ground provided in s 74(1)(a) of the Act, i.e. that the grant of the application would not be in the public interest. To support this contention, the Objector submitted that s 98D of the Act does not authorise non-metropolitan liquor stores to trade on Sundays as a result of Parliamentary debates in 2006, which recognised that hotels in many country towns play an important role in community life.
- 13 The Objector also submitted that it has a convenient, modern, clearly sign-posted and popular bottleshop immediately opposite *Liquorland Margaret River* and noted the Director's *Extended Trading Permits – Sunday Trading – Liquor Stores* policy, which states that travelling distance between outlets will be one of the circumstances of particular relevance in the determination of such applications.
- 14 The Objector also submitted that the *Margaret River Hotel* bottleshop is a very large focus of its business and is open every Sunday from 10 a.m. to 10 p.m., which is a longer than the trading hours proposed in the Licensee's application. In this regard, the Objector also submitted that it stocks a range of packaged liquor that is more than sufficient to cater to the requirements of the public "...on a regular Sunday in Margaret River..."
- 15 Noting the Licensee's comments regarding the Government's current reconsideration of trading hours for non-metropolitan liquor stores, the Objector submitted that it would be preferable for the matter be left for Parliament to resolve in due course.
- 16 As this is an application for an ETP under s 60(4)(g) of the Act to authorise extended trading hours for a period exceeding three weeks, the Applicant must satisfy the licensing authority that the granting of the application is in the public interest, pursuant to r 9F(b) of the *Liquor Control Regulations 1989* and ss 38(1)(b) and 38(2) of the Act.
- 17 In this regard, s 38(2) is clear in its imposition of an affirmative or positive obligation on an applicant to demonstrate that granting of the application is in the public interest and it is insufficient to simply demonstrate that the grant of the application is not contrary to the public interest.
- 18 Without confining the scope or meaning of the public interest in s 38(2), s 38(4) prescribes a number of factors that might be considered in determining whether or not the grant of an application is in the public interest.
- 19 In this regard, advancing the objects of the Act, as set out in s 5, is also a relevant public interest consideration.
- 20 When determining an application for the grant of an ETP, I note there is wide discretion afforded to me in deciding what weight to give to the competing interests and other relevant considerations raised in the application. Ultimately, the pertinent question is, after having regard to all the circumstances and the legislative intent,

whether the grant of the permit is justified (see the comments of Templeman J in *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356, CIV 2758 of 2000).

- 21 The power of the licensing authority to grant licences and other applications under the Act is found in s 33 of the Act, which provides absolute authority to grant or refuse an application on any ground or for any reason considered to be in the public interest, provided that applications are dealt with on their own merits.
- 22 The hours of trading under a liquor store licence are governed by ss 97 and 98D of the Act, with s 98D(1)(b) providing no permitted hours on Sundays for liquor stores located outside of the metropolitan area.
- 23 However, notwithstanding this restriction, the Act also provides for ETPs, with s 60(4)(g) of the Act specifically identifying that an extended trading permit may provide for:

“extended hours, authorising the licensee to sell liquor under the licence at specified hours that would not otherwise be permitted hours, on such days other than a Good Friday as may be specified, which remains in force for the period specified”

- 24 Therefore, as Margaret River is located outside of the metropolitan area, the grant of an extended trading permit is required in order for the Licensee to be able to trade on Sundays.
- 25 In relation to the application, I note that in *Woolworths Ltd -v- Director of Liquor Licensing* [2013] WASCA 227, the concept of one-stop shopping was accepted as a notorious fact and of great importance in contemporary Australian life, especially to working people who shop at large suburban shopping centres. Whilst noting that it is unlikely that the Margaret River Shopping Centre constitutes a large suburban shopping centre, I nonetheless accept the Licensee’s submissions that Margaret River is a regional tourist centre and that Sunday trading is to be expected of a liquor store located at the Margaret River Shopping Centre.
- 26 In arriving at this conclusion, I have also noted the comments of the Liquor Commission in LC 28/2013, when granting the Licensee’s liquor store licence, that:

“It is the Commission’s view that the added competition and convenience afforded, especially to the residents by the grant of the application is a significant public interest consideration.”

- 27 Furthermore, in *McKail’s Investments Pty Ltd v Commissioner of Police* (refer LC 39/2013), in determining to grant an extended trading permit for Sunday trade by a liquor store licence, the Liquor Commission observed that:

“Being mindful of section 5(1)(c) of the Act, the Commission considers that it is in the public interest to cater for the requirements of consumers of liquor in Albany by providing them with the ability to purchase a wider range of product

on Sundays. There is nothing before the Commission that would suggest that the granting of the extended trading permit would increase the harm or ill-health caused to people, or any group of people, due to the use of liquor.

There are no other public interest considerations that would suggest that it would be contrary to the public interest in the granting of the application.”

- 28 In my view, the application can be distinguished from the general approach provided in the Director’s relevant policy by the fact that the grant of the application will provide convenience to consumers using the Margaret River Shopping Centre on a Sunday. Accordingly, I am satisfied that Licensee’s evidence has established that the grant of the application will cater to the requirements of consumers for liquor and related services (object 5(1)(c) of the Act) and facilitate the use and development of licensed facilities reflecting the diversity of the requirements of consumers in the State (object 5(2)(a)).
- 29 Conversely, it is my view that:
- (a) the Objector has provided little or no evidence to support its grounds of objection, and
 - (b) the underlying intent of the objection would appear to be directed towards protecting the objector’s existing market share,
- 30 Accordingly, I find the objection has not been made out as required under s 73(10) of the Act.
- 31 I am therefore satisfied that the reasons in support of the application are valid and that the grant of the application is in the public interest. Accordingly pursuant to s 60(4)(g) of the Act, an extended trading permit is granted authorising the sale and supply of packaged liquor only on Sundays, from 10 a.m. to 7 p.m.
- 32 The permit is subject to the following conditions:
- (a) No trading is permitted on Christmas Day, Good Friday or before noon on ANZAC Day.
 - (b) The area to which the permit relates is the whole of the licensed premises.
 - (c) If there is an inconsistency between these conditions and any other condition to which the licence or permit is subject, the condition that is more onerous for the licensee prevails.
 - (d) The permit will remain in force for a period of five years, commencing 25 November 2015 and **expiring 24 November 2020.**
- 33 The Licensee is reminded that:
- (a) the permit can be modified at short notice if it is found that the licence is being operated in a manner contrary to the public interest; and
 - (b) pursuant to s 60(8a) of the Act, the licensing authority may cancel an extended trading permit at anytime, if satisfied that the permit is no longer appropriate.

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- 34 Parties to this matter dissatisfied with the outcome 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.
- 35 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Brett Snell

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING