

DECISION OF DIRECTOR OF LIQUOR LICENSING

MATTER: APPLICATION FOR GRANT OF A LIQUOR STORE LICENCE

APPLICATION ID: A000228327

PARTIES: JENET MWANZA (APPLICANT)
CHIEF HEALTH OFFICER (INTERVENER)

PROPOSED PREMISES: EXOTIC AFRICA,
UNIT 9/10 ATWICK TERRACE, BALDIVIS

DECISION OF: B. SNELL
DEPUTY DIRECTOR LIQUOR CONTROL AND
ARBITRATION

DATE OF DECISION: 31 JULY 2017

1. On 24 February 2017, the Applicant made an application to the Director of Liquor Licensing (the Director), pursuant to s 47 of the *Liquor Control Act 1988* (the Act), for the grant of a liquor store licence in respect of a specified part of the proposed premises.
2. The application was advertised in accordance with instructions issued by the Director and while no notices of objection were received, a notice of intervention was lodged by the Intervener, pursuant to the provisions of s 69 of the Act.
3. On 16 May 2017, the parties were advised, pursuant to ss 13 and 16 of the Act, that:
 - (a) a document exchange would take place so that each party would be given a reasonable opportunity to present its case; and
 - (b) the application would be determined on their written submissions.
4. As this an administrative decision and not a judicial one, rather than referring in detail to the entirety of the evidence before me, I will set out what I consider to be the relevant material facts. I will also outline the process of my reasoning from consideration of those material facts to conclusion. Where there has been a conflict in submissions that has been significant to the outcome, I will set out the differing positions advanced by the parties and provide reasons why I have preferred one position over another.¹
5. According to a report by an Inspector of Licensed Premises, the proposed premises is located within a commercial retail precinct on Safety Bay Road, Baldivis, with the proposed premises being set back from Atwick Terrace and fronting onto a car park.

¹ Martin CJ in *Hancock -v- Executive Director of Public Health* [2008] WASC 224, observed that reasons such as these are not “to be construed minutely and finely with an eye keenly attuned to the perception of error.”

search of specialty liquors, so that “they will have the ‘African Experience’ in food and liquor right here in Baldivis.”

10. The Applicant’s PIA also provided generalised information on the surrounding locality, which included demographics, outlet density, as well as generally addressing those matters prescribed in ss 5 and 38(4) of the Act.
11. In terms of impact on the locality, the Applicant submitted that “Exotic Africa will integrate well by providing diversity to the locality and drawing a new kind of people to the area thereby increasing business in the area – and supporting other businesses in the area.” It was also noted that while there are already other liquor stores in the vicinity, the grant of the application would afford consumers a choice of liquor to buy, thereby providing for variety.
12. The Applicant identified the following existing licensed premises, within the locality, as already being able to sell packaged liquor:
 - (a) First Choice Liquor Superstore Baldivis (liquor store), located approximately 130m from the proposed premises;
 - (b) The Chase Bar & Bistro (tavern), located approximately 160m from the proposed premises;
 - (c) Liquorland Baldivis (liquor store), located approximately 200m from the proposed premises; and
 - (d) BWS Baldivis (liquor store), located approximately 900m from the proposed premises.
13. The Applicant also asserted that:
 - (a) “...an increase in the number of patrons frequenting Exotic Africa will create more job opportunities for the local community in the sense that Exotic Africa will need to engage more staff to meet an increase in service demand...”; and
 - (b) one of the cultural benefits to flow from the grant of the licence would be that “more migrate families will be able to come out and socialise with other families ‘over a beer’, thereby integrating the communities of the City of Rockingham.”
14. The representations of the Intervener regarded the potential for the application to cause harm or ill-health to people, or any group of people, due to the use of liquor and the minimisation of that harm; with the specific grounds of the intervention being based on the following concerns:
 - (a) that the association of the sale of packaged liquor with general grocery items can reinforce alcohol as a non-harmful product and establish its cultural place as part of everyday life, shaping attitudes and behaviours towards alcohol;

- (b) that the association of alcohol products with grocery items can lead to increased consumption and harm;
 - (c) that increasing the availability of packaged liquor poses a risk of harm or ill-health; and
 - (d) if the licence is granted, the imposition of conditions, consistent with the Applicant's intended manner of trade, that seeks to separate alcohol from the general grocery items would be an important harm minimisation approach.
15. The Intervener also submitted that on the 11, 12 and 13 April 2017, a delegate of the CHO contacted the Applicant by email and telephone to clarify aspects of the application, with the Applicant providing the following information:
- (a) only African beers will be sold at the premises;
 - (b) liquor will be displayed on shelves that are located within the store and no other food or non-alcoholic beverage items will be stocked on the same shelf as liquor items;
 - (c) liquor sales will be processed at a separate point of sale within proposed the licensed area to all other items in the store;
 - (d) it is not planned that alcohol advertising will be permitted in the store (e.g. on posters, etc.); and
 - (e) a curtain will be hung in front of the liquor display area.
16. At the outset, it should be noted that there is no presumption in favour of the grant of the application; but rather the Applicant must adduce sufficient evidence to discharge its burden under ss 5 and 38(2) of the Act.
17. The Intervener, however, carries no burden of proof², but rather provide submissions to assist the licensing authority to make an informed decision.
18. Each application must be considered on its merits and determined on the balance of probabilities pursuant to s 16 of the Act. However, it is often the case when determining the merits of an application that tension may arise between advancing the objects of the Act and when such circumstances arise, the licensing authority needs to weigh and balance those competing interests.³
19. While the rules of evidence do not apply to proceedings before the licensing authority⁴, decisions of the authority must be made on the balance of probabilities and be based on the evidence before it. Furthermore, notwithstanding that s 5(2)(e) of the Act requires the licensing authority to provide as little formality or technicality as may be

² See Greaves J, *Re Gull Liquor* (1999) 20 SR (WA) 321.

³ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258.

⁴ *Liquor Control Act 1988* (WA): s 16(7).

practicable, the evidence of the parties needs to be relevant, reliable and logically probative to assist the authority to assess the probability of the existence of the facts asserted in each case⁵.

20. Buss JA⁶ set out the statutory framework for the determination of an application under the Act in the following terms:
- (a) by s 38(2) of the Act, an applicant must satisfy the licensing authority that the granting of an application is in the public interest;
 - (b) the expression “in the public interest”, imports a discretionary value judgment⁷;
 - (c) the factual matters that I am bound to consider, are those relevant to the objects of the Act, as set out in s 5(2) of the Act;
 - (d) the Act’s primary objects relate to:
 - (i) regulating the sale, supply and consumption of liquor;
 - (ii) minimising harm or ill-health caused to people or any group of people due to the use of liquor; and
 - (iii) catering 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;
 - (e) the factual matters that I am entitled to consider, are the following matters, as set out s 38(4) of the Act:
 - (i) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
 - (ii) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and
 - (iii) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
 - (iv) any other prescribed matter⁸; and
 - (f) section 5(2) is mandatory, whereas s 38(4) is permissive.

⁵ Refer *Busswater Pty Ltd v Director of Liquor Licensing* (LC 17 of 2010).

⁶ *Woolworths v Director of Liquor Licensing* [2013] WASCA 227

⁷ *O’Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson and Gaudron JJ). If the statute provides no positive indication of the considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of “the public interest” will ordinarily be confined only by the scope and purposes of the statute.

⁸ NB: no other matter has been prescribed.

21. Determining whether the grant of an application is “in the public interest” requires the licensing authority to exercise a discretionary value judgment confined only by the subject matter and the scope and purpose of the legislation⁹. In relation to this undertaking, Tamberlin J¹⁰ said:

“The reference to ‘the public interest’ appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.

The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.”

22. By way of this application, the Applicant is seeking a liquor store licence to offer exclusively African liquor products in association with food, non-alcoholic beverages and other unique African products currently being sold to the public at the premises. As such, the Applicant bears the onus of establishing that an application is in the public interest. This includes establishing any consumer requirement by reliable and cogent evidence for the purposes of advancing the object of the Act at s 5(1)(c).
23. Section 5(1)(c) of the Act provides that a primary object of the Act is to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, tourism industry and hospitality industry of the State. Evidence of consumer requirement must be reliable and cogent.¹¹
24. In this regard, Banks-Smith J¹² said:

“I consider s 5(1)(c) requires regard be directed to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in considering the issue of catering for consumer requirements.

Catering for consumer requirements is not to be considered in isolation. The potential and opportunity for proper development of the industry (including change) is not to be ignored.

Assuming there is appropriate probative evidence, the words invite a broader ambit of matters to be considered as part of assessing the diversity of consumer requirements and how they are to be catered for.

⁹ Refer *Re Minister for Resources: Ex parte Cazaly Iron Pty Ltd* [2007] WACA 175 and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241.

¹⁰ *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142.

¹¹ *Woolworths v Director of Liquor Licensing* (2013) 45 WAR 446 [89] (Buss JA); *Australian Leisure & Hospitality Group Pty Ltd v Commissioner of Police* (LC 01/2017) [38].

¹² See *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2017] WASC 88 [68].

That does not diminish the role of the other objects to which the Commission must (and may) have regard.”

25. In terms of “appropriate probative evidence”, the application was supported by:
- (a) a petition bearing the names, addresses, country of origin and signatures of 51 persons, including that of the Applicant;
 - (b) eight letters of support, from persons who all indicated that they would like to be able to purchase African beer, wine and liqueurs from Exotic Africa; and
 - (c) the Applicant’s written submissions and assertions, including that:
 - (i) there is no known African liquor store, specifically dedicated to selling African liquor, anyway near Baldivis or in the city of Rockingham; and
 - (ii) the very small proposed licensed area, in an already small store, will limit the stock availability of the liquor to a small one.
26. In this regard, I note that all the petitioners and the persons who provided letters of support, were all customers of Exotic Africa and it is understandable and not unexpected that these customers would express support for the application. However, the Applicant must demonstrate that the grant of the application is in the public interest, not simply that it may satisfy its customers’ needs or preferences, which it has not done. In this regard, the Liquor Commission observed in *MYD Korea Pty Ltd v Commissioner of Police and Others*¹³ that while it was common ground that the surveys reported by the applicant in those proceedings showed support from its current customers for the convenience of purchasing ethnic liquor products and grocery items at the same premise, “It is far from clear that there is a requirement from the wider community for that availability notwithstanding the demographics of the surrounding suburbs.”
27. Accordingly, convenience is just one factor to be considered when considering the requirements of consumers and a liquor store at every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public would not accord with the provisions and intent of the Act.¹⁴
28. In regard to the Applicant’s petition and letters, the Liquor Commission has previously expressed reservations¹⁵ about the weight that may be applied to such information. This has been because, among other reasons, the outcome of petitions, surveys and the like is dependent upon the method of selection and sampling of respondents and the objectivity of the petition. This observation of the Liquor Commission is directly relevant to the probative volume of the material submitted by the Applicant in this case. Additionally, I have noted that several of the Applicant’s consumers specifically

¹³ (LC 21/2015).

¹⁴ See *Liquorland (Australia) Pty Ltd v Commissioner of Police & Others* (LC18/2015).

¹⁵ See *Liquorland (Australia) Pty Ltd, supra*.

mentioned seeking Amarula Cream Liqueur, which I consider to be a readily available liquor product.

29. In my view, the Applicant has failed to demonstrate, through appropriate probative evidence, that the grant of the licence will cater to the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry. In the absence of such evidence, I am guided by the previous findings of the Liquor Commission¹⁶ that if “convenience was seen to be meeting the “public interest” requirement, then the weight to be accorded to that factor would also need to be reviewed in the context of the proper development of the liquor industry. In that respect, the provision of liquor products in supermarkets, delicatessens, butchers, or other retail outlets where grocery items are purchased regularly, and at which it would merely be convenient to buy liquor, is viewed by the Commission as not being a sufficient reason to grant an application for a liquor store licence.”
30. I consider that some of the Applicant’s submissions are somewhat naïve, including her decision to sign the consumer petition; and/or are otherwise deficient, particularly regarding the policy requirements of the Director.
31. In this regard, the Director’s policy on *Public Interest Assessment – Requirements and Application Procedures* recognises that the public interest issues associated with some premises, including liquor stores, are often more complex and typically have a greater impact on the surrounding community than other licence types. Accordingly, the policy specifies that these types of applications are expected to supply supporting information that covers a wider and more detailed scope of public interest issues, including outlet density information, taking into account:
- (a) the location of all existing licensed premises within the locality;
 - (b) nature of services provided by the other licensed premises; and
 - (c) the level of access to, and diversity of the services.
32. While the Applicant identified four relevant existing premises within the locality, no analysis was provided of:
- (a) the nature of services provided by the other licensed premises; and/or
 - (b) the level of access to, and diversity of the services at each of the premises,
- apart from the bare assertion that two of the liquor stores are operated by the same licensee, which would not provide “the community with variety as per planned policies by the local government.”
33. It is unfortunate that the Applicant has not placed any detailed information before me in relation to the types of liquor sold or supplied at the existing packaged liquor outlets in the locality, including whether or not they may or may not already offer some brands or

¹⁶ *MYD Korea Pty Ltd v Commissioner of Police and Others* (LC 21/2015).

types of African liquor¹⁷; or the types of African liquor it proposes to sell and supply (i.e. a proposed liquor stock list or details of the brands, number and types of liquor).

34. Similarly, while asserting that “Exotic Africa is committed to minimising harm or ill-health cause by alcohol consumption”, I believe that some of the proposed strategies outlined in the Applicant’s Harm Minimisation Documents, lodged in accordance with the Director’s *Harm Minimisation* policy are poorly conceived, such as:

- (a) the inclusion in the Applicant’s Management Plan of the provision of a complimentary drink to invited guests, as part of a bona fide reward system (i.e. where persons have acknowledged their willingness to receive such invitations and a list of names will not be developed from, for example, a competition), when a liquor store licence does not authorise the consumption of liquor on the licensed premises;
- (b) the notation on the Management Plan that it is an offence for a juvenile to consume liquor on licensed premises under any circumstances, without also acknowledging that it is likewise an offence for an unaccompanied juvenile to enter or remain on licensed premises; and
- (c) the Applicant’s assertion in its Management Plan that Exotic Africa will implement the House of Management Policy and Code of Conduct by committing itself to adopting a number of practices, including that “No liquor will be allowed to be consumed by an intoxicated person on the premises”, when in fact, as already noted, the sale of liquor for consumption on the premises is not authorised under a liquor store licence.

35. As noted by the Liquor Commission¹⁸:

“Liquor is a product that may have negative consequences in the community and is subject to extensive regulation as to its sale, supply and consumption. These controls and restrictions exist for the benefit of the community and whilst some members of the community may express a desire for more convenience, the Commission is entrusted with the responsibility of making a determination on whether the public interest is served by any proposal to widen or extend the level of convenience currently enjoyed by the public by the extension or granting of certain licences.”

36. Apart from convenience, the Applicant contends that the grant of the licence will:

- (a) promote some diversity in the local liquor market; and
- (b) *increase the Applicant’s business* [emphasis added], which the Applicant alleged would then have some positive flow-on effects for local community.

¹⁷ Notwithstanding, a quick on-line search of the website for the First Choice Liquor Superstore Baldvis shows that it stocks five African liquor products, including two red wines, one white wine, one sparkling wine and Amarula Cream Liqueur.

¹⁸ ***Liquorland (Australia) Pty Ltd v Commissioner of Police & Others*** (LC18/2015).

37. However, in my view, these contentions are more concerned with the Applicant's own commercial interests; which do not equate with the public interest for the purposes of s 38(2) of the Act.
38. Section 37(1)(f)(i) of the Act provides that an application to the licensing authority for the grant of a licence shall not be granted unless the licensing authority is satisfied that the premises to which the application relates are of a sufficient standard and suitable for the proper conduct of the business to be carried on there.
39. In this regard:
- (a) s 42 of the Act provides that during the permitted hours the licensee of a liquor store licence is authorised to keep open the licensed premises and to sell packaged liquor on and from the premises to any person; and
 - (b) the Cambridge Dictionary¹⁹ defines 'liquor store'²⁰ as "a shop that sells *mainly* [emphasis added] alcoholic drinks to be taken away and drunk at home."
40. Therefore, I also think it is relevant to observe that Exotic Africa is an African goods specialty store and not a liquor store. As a result, I do not consider that the Applicant's business will be consistent with that of a liquor store (i.e. primarily concerned with the sale of packaged liquor), but rather would be more focussed on selling specialised African foods and goods.
41. Further, the manner in which the Applicant proposes to operate a liquor store and a specialty store on the same premises also presents some uncertainties. This uncertainty may be a product of the fact the application is for a very small portion of the existing store to be licensed. Nevertheless, the Applicant should be clear about the operational and regulatory requirements relevant to the proposed premises.
42. Relevantly, I also note that s 5(1)(a) provides that it is a primary object of the Act to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is consistent with taking a measured approach to the granting of licences and whether the grant of an application will contribute to the proper development of the liquor industry.²¹
43. In this regard, the long title of the Act provides that it is an Act to *inter alia* regulate "the use of premises on which liquor is sold" including, "to provide for orders that may prohibit persons from being employed at, or entering, licensed premises." Therefore, as part of the Act's regulatory provisions, there are a number of offences relating to the conduct of persons on licensed premises.

¹⁹ See <http://dictionary.cambridge.org/dictionary/english/liquor-store>

²⁰ *Interpretation Act 1984* (WA): s 19(1) generally provides that in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material.

²¹ See *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384.

44. In relation to one such issues, i.e. juveniles on licensed premises, the Applicant lodged submissions on 4 April 2017, in which it was submitted that juveniles would be prevented from entering the licensed premises by virtue of the fact that the liquor store section of the premises would be separated from food and other goods by a screen partition of clear panel blinds, with a large banner stating that “18+ YEARS RESTRICTED ENTRY”. Further, it was also proposed that the duty manager would enforce this separation by guarding the entrance to the liquor store should juveniles enter the premises.
45. However, it was also submitted there will only be one employee in the store to serve both the liquor and food/other goods sales and I am uncertain how the Applicant proposes that one staff member will be able to manage the two distinct sales points in the store for liquor and non-liquor products, particularly given the Applicant’s intention to hang a curtain in front of the licensed area (see Figure 2) which may obstruct sightlines from the licensed area to the rest of the shop and vice versa.



Figure 2: Shows the dedicated sales point proposed for liquor sales in the proposed licensed area, which is separated from the rest of the store by a temporary curtain erected by the Applicant.

46. Further, the Act permits limited circumstances when unaccompanied juveniles are permitted on licensed premises are clear and I draw the Applicant’s attention to s 121(4) of the Act, which provides that where a juvenile enters or remains on any part of licensed premises —
- (a) the licensee;
 - (b) any employee or agent of the licensee who permits the juvenile to enter or remain on that part of the licensed premises; and
 - (c) the juvenile,

each commit an offence and are subject to a range of prescribed penalties.

47. I also note there are some exceptions to this prohibition, including s 121(5)(a)(i) of the Act, which does not prohibit juveniles from being permitted entry to, or remaining on, a place where the sale and supply of liquor is authorised if the juvenile is accompanied by, and under the supervision of, a responsible adult.
48. Similar provisions exist in s 115 of the Act, regarding:
- (a) permitting drunkenness or violent, quarrelsome, disorderly or indecent behaviour, to take place on licensed premises;
 - (b) permitting any reputed thief, prostitute or supplier of unlawful drugs to remain on the licensed premises; or
 - (c) permitting or suffering to be conducted on the licensed premises any gaming or betting which contravenes s 110(1) of the *Gaming and Wagering Commission Act 1987* or any other activity which contravenes a provision of another written law.
49. Furthermore:
- (a) Part 5A of the Act deals with prohibition orders, whereby persons can be prohibited by an order from entering specified licensed premises; licensed premises of a specified class or any licensed premises, with s152M of the Act further providing that it is an offence for a responsible person, as defined by s 3 of the Act, to permit a person who is subject to a prohibition order to enter or remain on licensed premises contrary to the order; and
 - (b) s 77(1) of the Act provides that it is an offence for an owner, occupier or licensee of licensed premises to make any alteration in any licensed premises, without the prior approval of the Director. In this regard, s 77(3) of the Act provides that an alteration shall be deemed to have been made if it comprises or consists of a change to the use of any premises or facilities. In my view, the definition of such a small licensed area wholly within another business would effectively mean that the licensing authority would have no control over the use of rest of the building in which the licensed premises is situated. As such, while the Applicant's store may currently be set up as a grocery store, there would be nothing to prevent a change in use of the premises around the licensed area to a use that is incompatible with the sale of packaged liquor (refer ss 65(1)(c) and 110(4) of the Act and associated offences), such as a restaurant, café, creche or child care centre or any of the places referenced in s 74(1)(g)(i) of the Act.
50. The Applicant has not provided submissions about some of these issues and where it has, they have been very basic in nature. Accordingly, I have formed the view that insufficient consideration has been given to the regulatory requirements and the associated impacts that will apply to the proposed operation of the business, notwithstanding that there are several previous decisions of the licensing authority

regarding applications for the grant of liquor store licences for very small liquor stores, with a similar focus on ethnic liquor products, particularly those of the Liquor Commission, where it was found that:

- (a) the design of very small licensed premises pose difficulties with regulation;
- (b) if convenience was seen to be meeting the “public interest” requirement, then the weight to be accorded to that factor would also need to be reviewed in the context of the proper development of the liquor industry; and
- (c) the provision of liquor products in supermarkets, delicatessens, butchers, or other retail outlets where grocery items are purchased regularly, and at which it would merely be convenient to buy liquor, is viewed by the Commission as not being a sufficient reason to grant an application for a liquor store licence.

51. While I am aware that each application must turn on the facts of the specific application, I have nonetheless observed the comments and findings of the Liquor Commission in the following matters, due to their high relevance to the present application:

- (a) *Seoul Mart Southlands Pty Ltd v Director of Liquor Licensing*²²;
- (b) *Paul Jacbus Van Den Berg and Una Van Der Berg v Commissioner of Police & Others*²³;
- (c) *MYD Korea Pty Ltd v Commissioner of Police & Others*²⁴;
- (d) *Seoul Mart City Pty Ltd v Commissioner of Police*²⁵;
- (e) *Springbok Foods Pty Ltd v Commissioner of Police*²⁶; and
- (f) *Jun Chul Seo v Director of Liquor Licensing*²⁷.

52. Given that these determinations are freely available from the Liquor Commission’s website, I consider that there is a good deal of precedent for the Applicant to have been aware of the issues raised in these relevant determinations and to address those matters through its PIA and other submissions, which it has not done.

53. When determining applications under the Act, Heenan J²⁸ noted that it is necessary to observe not only the object set out in s 5(1)(c), but that:

“... it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that

²² LC 14/2016.

²³ LC 10/2016.

²⁴ LC 21/2015.

²⁵ LC 27/2014.

²⁶ LC 26/2014.

²⁷ LC 31/2011.

²⁸ *Woolworths Limited -v- Director of Liquor Licensing* [2012] WASC 384.

this statutory policy of regulation is entirely consistent with a measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of the requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it.”

54. Accordingly, I consider that the grant the application in the manner sought may be contrary to the Act’s regulatory object and may not be in the public interest, particularly where:
- (a) the licensee would have all the benefits associated with the sale and supply of liquor, but due to the nature of its extremely small size and/or location wholly within another store/business, would be unfettered by some of the regulatory controls that are usually imposed on the whole of the premises²⁹ by the Act; and
 - (b) the licensing authority would have no regulatory control over the future use of the shop/business in which the licensed premises is wholly located and therefore little or no influence on whether those uses (should the business operating around the liquor store change) would be compatible with the sale and supply of packaged liquor or the Act’s objects.
55. This is not some abstract theoretical concern, but is a tangible and significant public interest consideration. As an example, following the grant of a liquor store licence for a specified part of a similarly themed ethnic liquor store, the licensee redesigned the unlicensed part of the shop from a grocery store to an unlicensed restaurant, which I consider would have posed serious compliance issues with the requirements of s 65(1)(c)³⁰ of the Act.
56. This serious matter only became evident to the Director when the licensee subsequently made application for the conditional grant of a restaurant licence.
57. The Intervener raised the issue of alcohol-related harm regarding harm and ill-health concerns on the integration of alcohol sales alongside grocery items. While I am aware that alcohol can cause harm and ill-health, in considering the primary object of the Act expressed in s 5(1)(b), I consider that the existing levels of harm and ill-health in the locality are no higher than other areas in Western Australia.

²⁹ Liquor Control Act 1988 (WA): s 3 of the Act defines “licensed premises” as the “premises specified or defined by the licensing authority in relation to a licence, protection order or permit as the **building** (emphasis added) or place to which that licence, order or permit applies.

³⁰ Liquor Control Act 1988(WA): s 65(1)(c) provides that the sale of packaged liquor for consumption off the licensed premises shall not, unless an extended trading permit so authorises, be or be permitted to be consumed on or in the immediate proximity of the licensed premises and, in these circumstances, I do not consider it unfeasible to envision customers of the unlicensed restaurant purchasing packaged liquor from the liquor store to consume in the unlicensed restaurant with their meals.

58. Therefore, on the evidence before me, I make the following findings of fact:
- (a) the application relates to a very small operation (approximately 12.8m²) within a small African specialty store, which will involve a discrete location within the specialised store where African food, non-alcoholic beverages and other unique African products are sold;
 - (b) the very small proposed licensed area, in an already small store, will severely limit the stock availability of the liquor, thereby limiting the range and quantity of African liquor the could realistically be offered for sale to the public;
 - (c) the business will not constitute that of a *bona fide* liquor store (i.e. mainly interested in the sale of packaged liquor), but would rather continue as a specialty store, with its focus on selling specialist African foods and goods;
 - (d) for the reasons that I have given at paragraphs 38 to 55 (above), the premises to which the application relates are not of a sufficient standard or suitable for the business to be carried on there under a liquor store licence;
 - (e) the likely benefits from the grant of the application, in the context of s 5(1)(c) of the Act, will be limited to the added convenience to some people in purchasing African packaged liquor from the specialty African shop at the same time as they purchase other supplies of African foods and other specialty goods; and
 - (f) the probative value of the Applicant's consumer evidence and Harm Minimisation documents are limited.
59. Having regard to the totality of the evidence, I am not satisfied on balance that the Applicant has discharged the onus prescribed by s 38(2) of the Act that the granting of the licence is in the public interest. The benefits of convenience shopping are outweighed by the statutory policy of regulation and the measured approach espoused by Heenan J to the proper development of the liquor industry and the facilitation of the use and development of licensed premises to reflect the diversity of the requirements in this State. The application is therefore refused.
60. 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.
61. This matter has been determined by me under delegation pursuant to s 15 of the Act.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING