

## DECISION OF DIRECTOR OF LIQUOR LICENSING

**NATURE OF APPLICATION:** GRANT OF A LIQUOR STORE LICENCE

**APPLICATION REF:** A000245955

**APPLICANT:** FIONA JANE LAMONT AND LOUISE CLAIR MLADINEO

**PREMISES:** LITTLE LAMONTS  
SHOP 7/660 GREAT NORTHERN HIGHWAY, HERNE HILL

**DELEGATE:** B. SNELL  
DEPUTY DIRECTOR LIQUOR CONTROL AND ARBITRATION

**DATE OF DETERMINATION:** 21 FEBRUARY 2018

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1. On 11 September 2017, an application was made to the Director of Liquor Licensing (the Director) by the partnership of Fiona Jane Lamont and Louise Clair Mladineo (the Applicant) for the grant of a liquor store licence for premises to be known as *Little Lamonts* and situated at Shop 7/660 Great Northern Highway, Herne Hill (the premises).
2. The application was made pursuant to s 47 of the *Liquor Control Act 1988* (the Act) and was advertised in accordance with instructions issued by the Director. No notices of objection or intervention were received. Pursuant to ss 13 and 16 of the Act, the application will be determined on the Applicant's written submissions.
3. The application was supported by a Public Interest Assessment (PIA) and other submissions to establish that the grant of the application is in the public interest. To this end, the PIA explained that the premises is a recently established food business on the tourism route in the Swan Valley and proposes to sell liquor produced by Lamont Winery, which will comprise a minimum of 80 per cent of the liquor offered.
4. Initially it was proposed to licence the premises by way of an extended trading permit (ETP) "cellar door permit" issued for the purposes of ss60(4)(ia) and 61A of the Act, given that the Swan Valley is considered to be a wine producing region. However, given that the Applicant is not a producer of wine in its own right and was also seeking to sell liquor not produced by Lamont Winery, it was ineligible for the grant of such a permit. Therefore, the present application was preferred.
5. The PIA also explained that:

"Lamont Winery is a family owned and operated wine and food tourism business and has been trading under a Producer's Licence since 1986. During that time both the wine and tourism industries have changed markedly in Western Australia. In the 1980's the Swan Valley had a fledgling domestic tourism market virtually all drawn from Perth and it's surrounds and culinary tourism was a yet to be coined phrase in an Australian context."

6. In terms of the Applicant's proposed manner of trade, it was submitted that *Little Lamonts* is a "take-out" business that provides ready to go meals, lunches, coffee and a variety of cakes and biscuits, as well as a large range of gourmet retail food items, which are prepared at Lamont Winery and transported approximately 4 km to the premises in a refrigerated van. According to the Applicant, the grant of a licence would enhance the product offering and visitor experience by offering Lamont's wines and a limited range of premium imported wines and beers. To complement the "food to go" business model, the Applicant is only interested in selling packaged liquor for consumption off the premises.
7. The Applicant anticipates a client base being comprised of both locals and tourists moving up and down Great Northern Highway and numerous letters of support were lodged by persons who are in favor of the grant of the application.
8. The Applicant's PIA also provided information on the surrounding locality, demographics of the locality; outlet density and generally addressed those matters prescribed in ss 5 and 38(4) of the Act.
9. In *Australian Leisure & Hospitality Group Pty Ltd v Commissioner of Police & Ors* [2017] WASC 88, Banks-Smith J considered the topic of the proper development of the liquor industry and commented on the importance of the licensing authority properly regarding "the introduction of a different offering in terms of consumer choice and diversity".
10. Pursuant to *Woolworths v Director of Liquor Licensing* [2013] WASCA 227, the licensing authority must determine "whether, in all the circumstances, it [is] in the public interest to grant the application, particularly in order to contribute to the proper development of the liquor industry in a manner which reflect[s] the diversity of consumer requirements."
11. In my view, the application is essentially seeking approval of a specialty store, where at least 80 per cent of the Applicant's packaged liquor offering will consist of wine produced by Lamont Winery.
12. On 9 January 2018, I wrote to the Applicant explaining that in *ALDI Foods Pty Ltd v Director of Liquor Licensing & Others* (LC 09/2017), the Liquor Commission had imposed a number of conditions on the grant of that licence, in order to regulate the sale, supply and consumption of liquor and to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor, which I considered represented the minimum standard applicable to a liquor store established in conjunction with a food or grocery business. These conditions included that:
  - (a) there is to be no external advertising of liquor products on the facade of the licensed premises;
  - (b) the browse/display area is to be closed off when not open for trade;
  - (c) the licensee is to have and maintain a CCTV system in accordance with the policies of the Director;

- (d) the liquor display and sale area must be separated from the food/grocery area by barricading of non-see-through material over two metres in height; and
  - (e) the entry/exit point between the licensed area and the rest of the food/grocery area must have a gate.
13. In response, the Applicant replied that it was not generally envisioned that the business would trade outside of permitted trading hours for a liquor store and on occasion when it does, it would be to provide for the offering coffee and a breakfast take-away service and undertook to erect signage advising customers that liquor was not for sale at the time, as occurs at *Lamont's Smiths Beach*.
14. The Applicant also advised that a CCTV system, compliant with the Director's *Safety and Security at licensed premises* policy would be installed.
15. Further, in response to the issue of whether the sale of liquor could be physically separated from sale of food and/grocery items, the Applicant advised that:
- (a) as the premises is a gourmet providore for fresh and packaged food, it was anticipated that wine and food would be displayed together; and
  - (b) given the small scale of the business and the low ratio of alcohol to food/grocery, rather than installing a gate, the Applicant preferred to use the simpler system of signage when trading outside of liquor store permitted hours.
16. Additionally, the Applicant submitted that *Little Lamonts* is a small business in small premises in the Swan Valley, with a focus on the sale of food and Lamont's wine together, which has been a focus of the Lamont family for over three decades.
17. It was further submitted that the directors of *Little Lamonts* are experienced hospitality operators, well versed in the responsibility of selling alcohol safely and in accord with the objects of the Act.
18. A number of trading conditions were also proposed by the Applicant, including that it would not sell or supply UDL's, bulk beer, spirits or cask wine.
19. While I note that *Little Lamonts* cannot be considered to be a cellar door outlet *per se*, it nonetheless represents a fairly unique opportunity for a liquor store in the Swan Valley to specialise in the sale of wine produced by a wine producer in the Swan Valley, in a manner that is fairly consistent with the intent of the legislative changes introduced by the *Liquor Legislation Amendment Bill 2015*, with the intention of allowing wine producers to establish, either individually or with other producers, a cellar door operation away from their respective licensed premises to promote their products to the wider public within their region.
20. Further, regardless of whether the Applicant was seeking a cellar door ETP or a liquor store licence, a number of trading conditions would be consistent between the two authorisations, including that unaccompanied juveniles are not permitted to enter or remain on any premises subject to liquor store licence or a cellar door ETP.

21. Therefore, after considering the Applicant's submissions, I am satisfied, taking into consideration the trading conditions imposed by the Applicant, the type of liquor proposed to be sold and its business model, together with the premises location in the Swan Valley, that the grant of the application will cater to the requirements of consumers for liquor and related services (i.e. choice and diversity), with regard to the proper development of the liquor industry. I am also satisfied that in granting the application in the manner proposed, I am acting with an appropriate level of flexibility and with as little formality or technicality as practicable.
22. Accordingly, in my view, the Applicant has discharged its onus under s 38(2) of the Act. I am also satisfied that the Applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted.
23. Accordingly, the licence is granted, subject to the following conditions:
- (a) Trading hours:
- (i) The permitted trading hours are those prescribed in s 98D of the Act. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.
- (a) Trading conditions:
- (i) The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.
- (ii) The sale of liquor for consumption on the premises is prohibited.
- (iii) At least 80 per cent of the liquor offered at the premises must be liquor produced by Lamont Winery.
- (iv) The licensee is prohibited from selling UDL's, bulk beer (i.e. an aggregate quantity of not more than 4 litres), spirits or cask wine.
- (v) The licensee is to have and maintain a CCTV system in accordance with the policies of the Director.
- (b) Compliance with Harm Minimisation Policy:
- (i) 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.
24. Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence. I am satisfied that the licence fee has been paid.
25. The licensed premises are defined as the area outlined in red on the plan(s) attached and dated 11 September 2017. A copy of that plan(s) is to be retained on the premises and produced to any authorised officer if required.

26. Pursuant to s 116(3) of the Act, the premises' trading name of *Little Lamonts* is approved. The Applicant shall not subsequently conduct business at the licensed premises under any other trading name, without the prior approval of the Director.
27. The Applicant must ensure that the signage required under s 116(5) of the Act is displayed on the licensed premises within 14 days of the date of this decision.
28. Additionally, pursuant to s 116(4) of the Act, the Applicant must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.
29. This matter has been determined by me under delegation pursuant to s 15 of the Act.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING