

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: 5 SHADES PTY LTD

OTHER PARTIES: KERYN LEIGH HASTIE (OBJECTOR)

PREMISES: PEPPERMINT GROVE BEACH HOLIDAY PARK

PREMISES ADDRESS: 48 PEPPERMINT GROVE ROAD, PEPPERMINT GROVE BEACH

APPLICATION ID: A000235738

MATTER: APPLICATION FOR THE GRANT OF A LIQUOR STORE LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 01 NOVEMBER 2017

Introduction

- 1 This is an application by 5 Shades Pty Ltd (the applicant) for the grant of a liquor store licence for premises to be known as Peppermint Grove Beach Holiday Park (Holiday Park) and located at 48 Peppermint Grove Road, Peppermint Grove Beach. The application is made pursuant to ss 47 and 68 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. An objection to the grant of the application was lodged by Keryn Leigh Hastie (the objector).
- 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 According to the applicant, Peppermint Grove Beach is a small seaside location, about 37km south of Bunbury, with approximately 250-450 permanent residents. The area consists of many retirees who have built substantial homes along the beach, holiday houses and young families seeking more affordable housing. The median house price is \$700,000.
- 5 The Holiday Park is located about 400m from Geographe Bay with a 300m² commercial space for a shop/café/liquor store. There are no other retail or commercial businesses in

¹ Refer s 16(7) of the Act.

town. The closest commercial and retail outlets to Peppermint Grove Beach are in Capel, some 9.5km away.

- 6 It was submitted that the proposed liquor store will be about 12.68m² (including 7.4m² of cool room) and provide a range of local and south-west wines and beverages. According to the applicant, the liquor store will be developed in conjunction with a general store and café, which will provide services to tourists staying the Holiday Park and residents of the town.
- 7 To gauge the level of public support for the application, the applicant provided a survey form to 200 residents, with 106 survey forms being returned. Of the 106 survey forms received, 79 were in favour of the grant of the application and 27 were opposed. According to the applicant, this is a clear demonstration that most residents of Peppermint Grove Beach are in favour of the proposed liquor store.
- 8 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA addressed the matters set out in s 5 and s 38(4) of the Act.

The objection

- 9 According to the objector, the Holiday Park is the first driveway as you enter Peppermint Grove Beach and the proposed liquor store is placed very close to the only access road into and out of the local community. Consequently, alcohol advertising and accessibility would be a prominent feature to all people entering or leaving the quiet beachside community. Also, the Holiday Park entices families with young impressionable children who will be exposed to alcohol promotion and consumption as part of the holiday experience.
- 10 The objector stated that they have witnessed some caravan park residents involved in verbal fights, wild parties and on one occasion, a bomb scare which resulted in a lockdown of the area by police. It was also submitted that some tourists to the area bring boats and readily available alcohol and boating should not be encouraged.
- 11 The objector stated that they are not opposed to the caravan park and tourists but they are opposed to introducing another outlet for alcohol to be sold in such a small community which is already more than catered for by other outlets within the immediate area. It was submitted that adding alcohol to a family holiday park or in an area known to be family friendly will not benefit the vibe of the area, but detract from it.
- 12 It was also submitted that the applicant will be unable to control the use of alcohol once it leaves the licensed premises and it is possible that older youths will supply liquor to their younger peers for beach parties, which has happened in the past. The objector also questioned the applicant's assertion that most residents in town support the application, given that not all residents were not surveyed and the survey was not conducted under correct conditions or with correct procedures by an independent body.

Determination

- 13 The applicant currently operates a Holiday Park in a small beachside location known as Peppermint Grove Beach. There are no other commercial facilities in town, with the nearest services being in Capel, approximately 9.8km away. The proposed liquor store will be very modest in size (a sales area just over 5m²) and will be part of a commercial development incorporating a café and general store which will cater to tourists and residents.
- 14 There was one objection to the grant of the application. The objector is concerned that the provision of alcohol within the community will be detrimental to the amenity of the area and asserts that the grant of the application is not in the public interest.
- 15 Each party to these proceedings carries a certain onus under the Act. 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 Alternatively, pursuant to s 73(10) of the Act, the burden of establishing the validity of any objection lies on the objector.
- 16 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 5.³
- 17 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.
- 18 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.
- 19 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.⁴

² Refer s 38(2) of the Act.

³ *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).

⁴ *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).

- 20 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.⁵
- 21 In consideration of the applicant's evidence, I find that the grant of the application will provide a service that presently does not exist in the locality, with residents and visitors to the area having to travel a round trip of approximately 20km to obtain packaged liquor.
- 22 The evidence, when considered as a whole, satisfies me that the grant of the application would cater to the requirements of consumers for liquor and related services and promote the tourism industry in the State as contemplated under object 5(1)(c) of the Act. I am also of the view that the grant of the application would facilitate the use and development of licensed facilities reflecting the diversity of consumers (object 5(2)(a)).
- 23 Although there have been some alcohol-related incidents as noted by the objector, it cannot be said that alcohol-related harm and disturbance in the community is occurring at a rate greater than what occurs in most communities. These disturbances have not been of such frequency or severity to conclude that the grant of the application will have an overall negative impact on the amenity of the area. The applicant's evidence is that alcohol-related harm in Peppermint Grove Beach is quite low.
- 24 In assessing the risk associated with the grant of an application, it is not the risk of harm in some abstract sense but rather an assessment of the risk with regard to the proved circumstances of the particular area to which the application relates.⁶
- 25 In this context, there is nothing in the evidence that would lead to a conclusion that the grant of the application poses an unacceptable risk to the community, or any at-risk groups in the community. I therefore find that the grant of the application would not be inconstant with the harm minimisation object of the Act.
- 26 When I weigh and balance the competing interests in this case, 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. It follows that the objector has failed to make out their grounds of objection as required under s 73(10).
- 27 Therefore, a liquor store licence is granted to the applicant subject to the following:

Trading 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.

⁵ Refer s 16 of the Act

⁶ *Executive Director Public Health v Lily Creek International & Ors* [2001] WASCA 410

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. I am satisfied that the prescribed fee has been paid.
- 29 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.
- 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