

**DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** LIQUORLAND (AUSTRALIA) PTY LTD

**PREMISES:** VINTAGE CELLARS FLOREAT

**PREMISES ADDRESS:** SHOP 86, FLOREAT FORUM SHOPPING CENTRE,  
1 HOWTREE PLACE, FLOREAT

**APPLICATION NO:** 15133

**NATURE OF MATTER:** **CONDITIONAL GRANT OF A LIQUOR STORE LICENCE**

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**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 known as *Vintage Cellars Floreat* and situated at Shop 86, Floreat Forum Shopping Centre, 1 Howtree Place, Floreat. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (“the Act”).
2. The application was advertised in accordance with instructions issued by the Director of Liquor Licensing (“the Director”) and while there were no objections lodged, the Commissioner of Police (“the Commissioner”) submitted a notice of intervention, pursuant to the provisions of s 69 of the Act.
3. While not pursuing its right to object to the application pursuant to s 73(2) of the Act, submissions were made by Woolworths Limited in which it sought to address what it considered to be factual errors in the Applicant’s analysis of BWS Floreat Forum and BWS Floreat regarding the services and stock carried by those stores.
4. To give effect to the provisions of s 16 of the Act, a document exchange was initiated between the parties<sup>1</sup> in order to ensure that each party was given a reasonable opportunity to present its case. A copy of Woolworth’s submission was also forwarded to the Applicant as part of this process.
5. Pursuant to the provisions of ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties, which are summarised below.

**Submissions of the Applicant**

6. According to the Applicant, the proposed store will be located at the Floreat Forum district activity centre (“the DAC”), which is the only activity centre in the locality featuring full range supermarkets within an enclosed shopping centre and around 90 specialty shops/personal service providers.

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<sup>1</sup> NB: as Woolworths Limited is not an objector in this matter, it was not joined as a party to these proceedings.

7. The Applicant submitted that:

“The proposed Store will be located in the outdoor part of the Centre, in a currently vacant store, directly facing the lower carpark, opposite the steps and lift down from the upper (street level) car park, at The Boulevard Hotel and library end of the Centre fronting The Boulevard. The Store is in a highly visible location for patrons accessing the (internal) mall entry to the Centre from either level of the main 2-level Centre carpark.”

8. To support its application and discharge its onus under s 38(2) of the Act to satisfy the licensing authority that the grant of the licence is in the public interest, the Applicant lodged a Public Interest Assessment (“PIA”), together with reports from MGA Town Planners (“the MGA report”) and Data Analysis Australia Pty Ltd (“the DAA report”).
9. The Applicant submitted in its PIA that the proposed liquor store will have a total licensed area of 142 m<sup>2</sup>, comprised of:
- (a) a selling area of 105.5 m<sup>2</sup> (71.5%);
  - (b) a cool room area of 29 m<sup>2</sup> (20%); and
  - (c) a stock area of 12.5 m<sup>2</sup> (8.5%).
10. The Applicant further submitted that if the application is granted, the premises will be operated as part of Liquorland’s national chain of Vintage Cellars stores, which present as boutique style stores offering a selection of fine wines and other premium liquor not available at Liquorland or First Choice stores. It was also submitted that Vintage Cellars offers specialist advice in relation to wines, tasting events and a Wine Club loyalty program for members.
11. The Applicant’s PIA also addressed the objects of the Act and those matters prescribed in s 38(4), with particular reference to the findings of the MGA report, which considered the application from a town planning perspective.
12. In this regard, the Applicant submitted that for higher order activity centres, such as the DAC, it is desirable to offer shoppers some variety in packaged liquor outlets and that the proposed premises will improve the opportunity for local residents to compare price and range among packaged liquor products, in a browse only store and with no drive-through component. It was also submitted that the Vintage Cellars store will fit a different niche to that of the existing BWS store at the DAC, with a greater focus on fine wines.
13. In terms of amenity issues, it was submitted that “amenity” has two connotations, referring to both the availability of facilities and services as well as to the quality of the environment, with the Applicant submitting that the location of the store immediately adjacent to the main eastern car park will enable customers to carry their liquor purchases to their cars or conveniently transport goods by trolley. It was also submitted that the store will benefit from a high level of security and surveillance

associated with the DAC, particularly given that the external car parking area adjacent to the shopping centre will also be well lit beyond the standard shopping hours.

14. As far as locality is concerned, the Applicant submitted that the location of the store will enable shoppers to purchase liquor in conjunction with grocery shopping because the store will front the eastern external car park, in proximity and en-route to the Coles Supermarket from the eastern entry point to the main mall. Vehicle entry points to the shopping centre are located on The Boulevard, Howtree Place and Floreat Avenue, which enable convenient access to car parking areas. The Howtree Place entrance leads directly into an underground car park beneath the Woolworths supermarket. The MGA report further noted that access to the shopping centre is convenient from the majority of residential areas in the locality, with the local road network well connected and an absence of man-made or natural features to obstruct access to the shopping centre.
15. The MGA report further noted that the major traffic impediment is the volume of traffic making use of Grantham Street and Hay Street, which link the western suburbs with the Perth CBD and Subiaco. The report also stated that traffic volume counts sourced from Main Roads Western Australia indicate that regional traffic through the locality and adjacent to the DAC is heavy.
16. The Applicant submitted that the population of the locality was 13,605 in 2006, rising to 14,518 as at 2011 and that if the current growth rate continues (of 302 persons per annum), which is likely because of infill residential development, the current population would be approximately 15,067. It was also submitted that:
  - (a) there was a slightly higher proportion of residents aged 65 plus in the locality (14.3%), compared to the Greater Perth area (12.5%);
  - (b) there was a lower proportion of those aged 25 to 34 in the locality (10.9%) than throughout the Greater Perth area (14.7%);
  - (c) the locality contained a similar proportion of people aged 0-9 (13.2%) and 10-19 (13.8%) to those in the Greater Perth area, (12.8% and 13.2%, respectively); and
  - (d) there was a similar proportion of persons in the locality aged 40-54 (22.6%), in comparison to the Greater Perth area (20.9%).
17. In relation to families, it was submitted that the proportion of families with children (52.2%) was higher than that of the Greater Perth area (45.5%), with an overall lower incidence of single parent families (10.5%), in comparison to that of the Greater Perth area (14.6%). Furthermore, in terms of the socio-economic profile advantage / disadvantage, the Applicant cited the 2011 Australian Bureau of Statistics SEIFA Index and submitted that the relevant population featured above average measures of socio-economic advantage/disadvantage and is considered to be a low risk community.

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18. Other relevant socio-economic factors cited by the Applicant to establish that the locality is not experiencing any significant levels of socio-economic disadvantage included that:
- (a) the rate of unemployment in the locality (3.1%) was much lower than the Greater Perth area (4.8%);
  - (b) individual, household and family incomes for the locality (\$862, \$2,050 and \$2,572, respectively) were well above those in Greater Perth; and
  - (c) the proportion of homes being fully owned in the locality (36.6%) is higher than the Greater Perth area (29.3%), while the relevant percentage of homes being rented (25.6%) was relatively consistent with the Greater Perth area (27.6%).
19. After considering the levels of at-risk groups present in the locality, the Applicant submitted that there are no significant concentrations of at-risk groups in the locality, aside from a higher proportion of couples with children.
20. Furthermore, the Applicant engaged Bodhi Alliance to conduct a sensitive premises audit of the locality and in a letter dated July 2014, it was:
- (a) reported that there are eight sensitive premises within an 800 metres walkable catchment of the store, comprising five places of worship, two schools and one childcare centre; and
  - (b) concluded that none of the sensitive places are likely to be impacted by the store, given the internalised configuration of the centre and the store's proposed location within it.
21. The Bodhi Alliance letter also reported that the patrons and operations of the other sensitive premises within the locality were unlikely to be impacted by the store due to low visibility and distance.
22. The Applicant also submitted that the store will have comprehensive security measures in place to minimise and deter crime and anti-social behaviour, including bright lighting throughout the store, an alarm system that is monitored off-site and CCTV cameras covering the store. Additionally, it was also submitted that the layout of the store has been designed to ensure that staff at the service desk will be able to conduct passive surveillance of the store and customers at all times and further submitted that the Applicant's harm minimisation strategies are consistent with the Director's *Harm Minimisation Policy*.
23. The Applicant submitted that notwithstanding the existence of seven licensed premises<sup>2</sup> within two kilometres of the proposed premises that are authorised to sell packaged liquor to the public, the proposed store will provide residents of, and visitors to the locality with a larger range of high-quality products than is currently available to

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<sup>2</sup> The seven licensed premises are comprised of three taverns and four liquor stores.

them and also make comparison shopping available in relation to packaged liquor at the DAC.

24. Data Analysis Australia (“DAA”) conducted 298 telephone surveys of residents in the locality and 215 intercept interviews of shoppers outside the Coles supermarket or passing by the proposed premises at the DAC, in order to assess public support for the grant of the application. On the basis of the survey results, DAA concluded that there is strong support for the proposed Vintage Cellars store from residents of the locality and those who use the Floreat Forum Shopping Centre, based on the convenience of the Centre itself and for some the convenience of the location of the proposed store within the Centre. However the dominant reason for consumer support was choice, followed by an interest in a store that might provide a different and higher quality range of takeaway liquor, particularly wines, than is currently available.
25. Accordingly, the Applicant submitted that the:
  - (a) survey evidence provides strong, objective evidence that the proposed liquor store’s facilities are sought after, and will be used, by a significant portion of the local population, as well as by visitors to the Centre; and
  - (b) proposed licensed premises will cater for the proven packaged liquor requirements for consumers in the locality in an appropriate and responsible manner.

#### **Representations of the Commissioner**

26. The Commissioner intervened in these proceedings for the purpose of making representations on the grounds permitted by ss 69(6)(ii) and (iv) of the Act, i.e. that if the application were granted, public disorder or disturbance would be likely to result or on relevant public interest matters.
27. To support his representations, the Commissioner made the following submissions:
  - (a) that the Applicant’s analysis of the existing packaged liquor outlets and services at the Floreat Forum, i.e. *BWS Floreat Forum* and *The Boulevard Hotel* was unreliable, given the Applicant’s:
    - (i) claim that the proposed store will be stocked with fine wine and premium liquor conflicts with the proposed stock list appended to the PIA, which indicates that the Applicant intends to stock discounted wines and mainstream liquor products, such as beer, cider and spirits; and
    - (ii) assertion that BWS Floreat Forum has a limited range of wine, which conflicted with the stock available when the Commissioner’s representatives visited BWS Floreat Forum, with the Commissioner submitting that a comparison of the proposed products by police noted the main difference will be that the proposed premises will specialise in Coles’ own wines and BWS Floreat Forum sells Woolworths’ wines, with the

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majority of the independent products available at BWS Floreat Forum also planned to be available at the proposed premises;

- (b) that the proposed licensed premises is of a similar size to BWS Floreat Forum;
  - (c) that no cellar or air temperature controlled storage is intended for the proposed premises, a further indication that the premises will be a generic liquor store offering mainstream liquor products; and
  - (d) while the Applicant stated that The Boulevard Hotel does not advertise their packaged liquor facility, police attendance at The Boulevard Hotel confirmed that:
    - (i) the liquor menu was placed on the bar service area in a prominent position and the General Manager informed police that all of the sealed liquor products on the premises' liquor menu were available for purchase as packaged liquor; and
    - (ii) while it is noted that the emphasis of The Boulevard is on-premises consumption, the premises does offer brands for sale as packaged liquor that could be considered as premium products.
28. The Commissioner also noted some collation errors in the DAA report relating to both the telephone survey and intercept survey and questioned the validity of the surveys, including:
- (a) that the Commissioner's analysis of the relevant data highlighted that 133 respondents to the telephone surveys did not require an additional packaged liquor facility at the DAC;
  - (b) that the responses of the telephone survey shows that BWS Floreat Forum already provides the most important requirements identified by the consumers for a packaged liquor facility at the DAC, being competitive prices, a convenient location and on-site parking; and
  - (c) the results of the intercept survey do not establish the requirement of consumers for an additional packaged liquor facility at the premises, including one that proposes to operate as a premium liquor outlet.
29. Representations were also made by the Commissioner on:
- (a) the Applicant's intended manner of trade, including information on older persons being as likely to be at risk of alcohol-related harm as any other group, despite the Applicant's inference that older persons are more responsible consumers of alcohol;

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- (b) the Applicant's participation in liquor discounting schemes may contribute to harm and/or ill-health in the locality, with particular reference to the study *Real or perceived impediments to minimum pricing of alcohol in Australia* by Chalmers J et al in *International Journal of Drug Policy* (2013) and the possibility of the Applicant engaging in competitive pricing, given the existence of other packaged liquor outlets at the DAC;
  - (c) the Applicant's proposed hours of trade;
  - (d) the veracity of the Applicant's submissions in relation to convenience shopping, given that the proposed premises is located outside the main shopping mall of the DAC and BWS Floreat Forum is located adjacent to the Woolworths Supermarket, with both an external entrance, as well as an entrance into the supermarket;
  - (e) liquor advertising and proposed at-risk groups at the DAC; and
  - (f) concerns about theft of liquor from licensed premises, with reference to Police activities in Operation Chapel, which established that a significant amount of liquor theft was under reported by liquor merchants, including the Applicant.
30. However, in the event that the application is granted, a number of conditions were recommended by the Commissioner for imposition on the licence.

### **Responsive submissions**

31. In submissions dated 20 November 2014, the Applicant responded to the representations made in the notice of intervention and lodged further evidence in the form of:
- (a) a letter from MGA, dated 18 November 2014;
  - (b) a letter from DAA dated 19 November 2014;
  - (c) supplementary statement of Karl Weber; and
  - (d) updated floor plans reflecting internal fit-out changes only.
32. The DAA letter commented on statistical aspects of the notice of intervention and concluded that many of the Commissioner's criticisms cannot be substantiated, suggesting rather that they are based on a misreading of the tables provided in the reports.
33. The MGA letter provided further information in relation to the submissions of Woolworths, including comments on the liquor range at the proposed store and at the two BWS stores in Floreat, as well as providing further information on the role of the DAC in servicing the daily and weekly needs of residents.

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34. In responding to the notice of intervention, the Applicant submitted that:
- (a) contrary to the views expressed by the Commissioner that the two packaged liquor facilities at the DAC already meet the requirements of consumers for packaged liquor sales, the survey evidence suggests that there is a demand for the services to be offered by the proposed store, not only among users of the Centre (as reflected in the intercept survey), but also within the local community (as canvassed in the telephone survey);
  - (b) 65% of survey respondents support the grant of the licence compared to 33.5% who do not, which the Applicant submitted amounts to support by a significant portion of the local community, given the representative nature of surveys;
  - (c) a significant portion of survey respondents indicated that they would use the proposed store regularly if the application is granted;
  - (d) 67% of telephone and 57% of intercept respondents who identified themselves as users of BWS Floreat Forum support the proposed store;
  - (e) 30% of users of the BWS Floreat Forum who thought they would use the store gave as a reason the fine wines/quality of product, or simply that they like Vintage Cellars;
  - (f) while a majority of the users of BWS Floreat Forum thought that the proposed store would be 'as convenient' as the BWS, some thought it would be 'more convenient', citing the location of the proposed store within the DAC as a reason for this view, with comments related to the location of the shop within the centre (particularly the Coles supermarket) and where they find it convenient to park;
  - (g) a majority of users of BWS Floreat Forum thought they would use the proposed Vintage Cellars at least monthly, with convenience given as the major reason for this; and
  - (h) the reasons for support for the proposed store are dominated by the desire for choice and competition, followed by the convenience of it being at that end of the shopping centre, with convenient location, on-site parking and competitive prices and specials / value for money ranked (in that order) as the most important features of liquor stores generally.
35. The Applicant also acknowledged that while the proposed store intends to carry some mainstream liquor products in each of the beer, cider and spirit categories, it will also carry premium items.
36. In relation to packaged liquor sales at The Boulevard Hotel, the Applicant submitted that while the hotel's liquor menu, as appended to the notice of intervention, does include a number of higher priced wines, in particular sparkling wines, the menu does not substantiate the Commissioner's claim that the hotel "offers brands which may be considered as 'premium'... packaged liquor" or that the hotel is seen as a convenient



option for purchasing packaged liquor, given that it was not nominated as a packaged liquor outlet in either customer survey.

37. Furthermore, the Applicant submitted that it is not particularly relevant that some members of the community consider that the existing packaged liquor outlets are sufficient to cater for their requirements where, as demonstrated by the survey evidence, a significant portion of the community would find it convenient to purchase packaged liquor from the proposed premises.
38. Similarly, the Applicant submitted that the fact that the majority of respondents answered that the proposed store would be as convenient as the existing packaged liquor outlet at the Centre does not detract from the public interest in support of the proposed store.
39. The Applicant also submitted that there is no evidence before the licensing authority that older people in the locality are experiencing any greater level of alcohol-related harm or ill-health than elsewhere, or are experiencing such harm at higher levels than other age-groups in the locality.
40. In response to the Commissioner's representations regarding the Applicant participating in liquor discounting schemes that may contribute to harm and/or ill-health in the locality, it was submitted that Vintage Cellars do not offer 'shopper docket' discounts and consistent with its positioning in the retail liquor market, the only form of discounting (other than specials) offered by Vintage Cellars stores is through its wine club loyalty program, which the Applicant disputes will encourage the use of multiple purchases to achieve a lower price, with no evidence of this occurring at other Vintage Cellars stores.
41. The Applicant further submitted that Vintage Cellars stores do not consistently engage in price matching and that the Commissioner's assertions that the store will engage in competitive pricing is speculative and unfounded. The Applicant also submitted that the other potential harms referenced in the notice of intervention are 'abstract' in the sense referred to in *Executive Director of Public Health v Lily Creek International Pty Ltd* [2001] WASCA 410 and do not establish that the locality is experiencing any greater level of harm than elsewhere.
42. In regards to Woolworths' submissions, the Applicant responded that, based on the matters raised in the submission, Woolworths Limited could, and arguably should have, lodged an objection, suggesting that

"Although the stated purpose of the Woolworths submission is to inform the Licensing Authority in relation to certain factual issues, Woolworths is clearly motivated by protecting the market share of its 2 stores in Floreat. That is a private interest and is not relevant to the determination of whether it is in the public interest for the Application to be granted."

43. In conclusion, the Applicant submitted that while the application is not solely premised on providing one-stop shopping convenience, given that the store is located adjacent to an external walkway (leading into the internal mall entrance closest to the Coles supermarket), the fact that the store is located outside of the main shopping mall at the DAC and away from the Coles Supermarket, does not detract from it providing one-stop shopping convenience, with the MGA report concluding that the proposed premises, as a specialist wine store, will meet a different demand to other premises in the locality.

### **Determination**

44. Before I proceed to determine this application, I think it relevant, as a preliminary matter, to give some consideration to the status of the submissions by Woolworths Limited.
45. It is my view that s 16(1) empowers the licensing authority to undertake functions under the Act in an inquiring manner, with s16(1)(d) specifically empowering the authority to receive submissions and representations in relation to any application before it, as it thinks fit.
46. In my view, Woolworths do not raise any matter that should be appropriately raised in a notice of objection, but rather seek to address errors in the Applicant's analysis of its relevant liquor stores. Therefore, I am satisfied that Woolworths' submission should be accepted into evidence in respect of this application.
47. In this regard, the Applicant's PIA notes that according to the MGA report, based on the small size of the BWS Floreat Forum store, there is a limited range and volume of beer, wine and spirits able to be displayed at any time and that the car park which the store is adjacent to is "the small southern car park".
48. However, according to Woolworths:
- (a) the factual position is that the BWS Floreat Forum Store is a relatively big store that offers a large and comprehensive range of product, with the store being 235m<sup>2</sup>, of which 193m<sup>2</sup> is trading area and 42m<sup>2</sup> being cool room, with the store being "well laid out and spacious";
  - (b) currently BWS Floreat Forum offers 2,360 liquor items (including duplicates for beers and RTD's) and carries the BWS "super premium range" which means the wines offered at the store are significantly over and above those in the "standard" BWS stock range. At BWS Floreat Forum, there are over 221 bottled reds, whites and sparkling wines offered, over and above the BWS mainstream range; and
  - (c) while the car park closest to the BWS store is the southern car park, this car park is not small and provides 87 car parking spaces with elevator access adjacent to the store that enables customers to travel from the extremely large underground

car park which sits below the BWS store and the adjoining Woolworths Supermarket, with an entry to the store directly from within the Woolworths supermarket.

49. Similarly, in relation to the BWS Floreat Store, the Applicant's PIA states that parking is limited to adjacent on-street parking and therefore the availability of parking is likely to vary, whereas the Woolworth's submissions notes that this is factually incorrect, with off-street car parking available in a 20 bay car park at the rear of the store, with a "convenient rear premises walk-way" from the car park to the store's rear entry.
50. In the Applicant's submissions in response to these comments, it denies that it deliberately provided incorrect information and submitted that:
- (a) the description of the BWS Floreat Forum as being 'small' was in relation to larger format stores, such as a First Choice or Dan Murphy's store;
  - (b) that BWS Floreat Forum:
    - (i) carries a total of 2,360 liquor items and BWS Floreat carries 2,251, with the proposed store carrying 1,956 items, which is a difference between 13% to 15%; and
    - (ii) of the above stock, the proposed store will carry a total of 1,312 wines, compared to 997 for the BWS Floreat Forum and 927 at BWS Floreat, a difference of between 24% to 27%; and
  - (c) that the proposed store's range will comprise 7% beer, 20% spirits and RTDS and 67% wine, consistent with Vintage Cellars being a wine specialist with a greater focus on wine; confirming that the proposed store provides for a different role or 'niche' to the existing BWS stores.
51. The Applicant further submits that while Woolworths may consider that its stores provide a similar range to the proposed store and are therefore sufficient to cater to the requirements of local consumers for such products, the ultimate judge of the public interest should be the public themselves, with the results of the surveys showing:
- "...the residents of the Locality and the users of the Shopping Centre strongly believe that they will benefit from the increase in choice that a Vintage Cellars outlet in the Shopping Centre will bring, and that they will use it. In that sense, there is a need that the BWS stores do not meet."
52. The Applicant also submits that the DAA letter establishes that a substantial proportion of the respondents who identified as recent purchasers of packaged liquor were familiar with the two BWS stores in Floreat (and also the Vintage Cellars store in City Beach), suggesting that their knowledge of the products available would have been taken into account by them in assessing support for the proposed store and its relative convenience.

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53. The Applicant also submits that a majority of current users of the BWS stores supported the application, with a substantial proportion of those nominating more choice and competition, the (more) convenient location of the proposed store within the DAC and the range of products, as reasons for supporting the grant of the application.
54. While I note the factual errors in the PIA, I also accept that the Applicant did not intend to deceive the licensing authority and, as such, it is my opinion that these errors do little to diminish the results of the customer surveys, which clearly indicate that patrons of the DAC are seeking choice and competition between liquor merchants.
55. In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, Buss J noted that:
- “By s 5(2), in carrying out its functions under the Act, the ‘licensing authority’...shall have regard to the primary objects of the Act and to certain secondary objects. The secondary objects include facilitating the use and development of licensed facilities, reflecting the diversity of the requirements of consumers in the State (par (a)).
- By s 5(3), if, in carrying out any of its functions under the Act, the licensing authority considers that there is any inconsistency between the primary objects and the secondary objects, the primary objects take precedence.”
56. The primary objects of the Act, as set out in s 5(1) are to regulate the sale, supply and consumption of liquor (par (a)); to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor (par (b)); and to cater for the requirements of consumers for liquor and related services, with regard to the proper development of, relevantly, the liquor industry in the State (par (c)).
57. Pursuant to s 38(2), an applicant who makes an application for a liquor store licence must satisfy the licensing authority that granting the application is in the public interest, with s 38(4) providing, without limiting s 38(2), the matters the licensing authority may have regard to in determining whether the grant of an application is in the public interest, including:
- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor (par (a));
  - (b) the impact on the amenity of the locality in which the premises, or proposed premises are, or are to be, situated (par (b));
  - (c) 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 (par (c)); and
  - (d) any other prescribed matter (par (d))<sup>3</sup>.

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<sup>3</sup> No ‘other...matter’ has been prescribed pursuant to s 38(4)(d).

58. In determining whether the grant of an application is in ‘the public interest’, I am required to exercise a discretionary value judgement confined only by the scope and purpose of the Act (refer *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). In this regard, Buss J further noted that:

“It is not uncommon for statutes to provide that a decision-maker shall or may take certain action if ‘satisfied’ of the existence of specified matters. See *Buck v Bavone* [1976] HCS 24; (1976) 135 CR 110, 118 (Gibbs J). The expression ‘in the public interest’, when used in a statute, imports a discretionary value judgement. See *O’Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson & 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. See *O’Sullivan* (216).

In the present case, the factual matter which the Commission was *bound* to take into account, in determining whether it was satisfied that the granting of the appellant’s application was ‘in the public interest’, were those set out in s 5 (2).

The factual matters which the Commission was *entitled* to take into account, in determining whether it was satisfied that the granting of the appellant’s application was ‘in the public interest’, were those set out in s 38(4).

Section 5(2) is mandatory whereas s 38(4) is permissive.

On a proper construction of the Act... the Commission was obliged to take into account the public interest in:

- (a) catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry in the State (s 5(1)(c)); and
- (b) facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State (s 5(2)(a)),

to the extent that those matters arose on the evidence (including notorious facts) before the Commission. See *O’Sullivan* (216); *R v Hunt*; *Ex parte Sean Investments Pty Ltd* [1979] HCA 32; (1979) 180 CLR 322, 329 (Mason J); *Jericho Nominees Pty Ltd v Dileum Pty Ltd* (1992) 6 WAR 380, 400 (Malcolm CJ, Pidgeon & Nicholson JJ agreeing).”

59. According to Justice Buss, the correct question the licensing authority should ask itself when determining such an application is, whether (having regard to all of the evidence and any notorious facts, including evidence as to consumer requirements for the range of liquor products and services which the Applicant proposes to provide) 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 reflects the diversity of consumer requirements.

60. Similarly, in *Jericho Nominees Pty Ltd v Dileum Pty Ltd* (1992) 6 WAR 380, Martin CJ formed the view that the “public interest” contemplated by the Act involves satisfying the requirements of the public to have liquor outlets consistent with good order and propriety in relation to the distribution and consumption of liquor and *inter alia* the proper regulation of such order.
61. Furthermore, Buss J noted the notorious fact that in contemporary Australian life, that one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres.
62. The Applicant submits that the grant of the licence will provide for the provision of one-stop shopping convenience and improve the opportunity for local residents to compare price and range among packaged liquor products at the DAC and that the Vintage Cellars store will fit a different niche to that of the existing licensed premises at the DAC, with a greater focus on fine wines.
63. The Commissioner makes representations on the basis that if the application is granted, public disorder or disturbance would be likely to result and on other relevant public interest matters.
64. The Applicant’s evidence clearly establishes that the DAC is a large suburban shopping centre capable of providing patrons with one stop shopping due to its two full range supermarkets, i.e. a Woolworths Supermarket and a Coles Supermarket and 90 specialty shops.
65. I also consider that the evidence of the parties establishes that there are two licensed premises already located at the DAC that can currently sell packaged liquor, namely:
  - (a) BWS Floreat Forum, located approximately 200 metres from the proposed licensed premises and adjacent to the Woolworths Supermarket; and
  - (b) The Boulevard Hotel, located approximately 100 metres from the proposed premises.
66. However, while I note that The Boulevard Hotel is a supplier of packaged liquor, by virtue of the fact that a tavern licence applies, I have also noted that the emphasis of the tavern is on on-premises consumption and that it does not appear to:
  - (a) advertise its packaged liquor sales; or
  - (b) be perceived by consumers as an option for purchasing packaged liquor, particularly given that it was not nominated as a packaged liquor outlet by any respondents to either of the consumer surveys conducted by DAA.

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67. I have also noted the Applicant's admission that BWS Floreat Forum currently serves patrons of the DAC seeking to purchase packaged liquor in conjunction with major weekly grocery shopping expeditions or single purpose trips and is likewise suited for purchases after the shopping centre has closed, given its location fronting a car park.
68. Therefore, given the presence of BWS Floreat Forum at the DAC, it is not surprising that the Applicant submits that the application is not solely premised on the provision of one-stop shopping convenience, but also on:
- (a) the provision of niche services to meet a different demand to other premises in the locality by offering a larger range of high-quality products than is currently available to consumers; and
  - (b) making comparison shopping available at the DAC in relation to packaged liquor, thereby leading to more choice for consumers and competition (presumably between liquor merchants).
69. I generally concur with the Applicant's submission that the survey responses provide objective evidence that the proposed liquor store's facilities are sought after, and will be used by a significant portion of the local population, as well as by visitors to the DAC. However, in so doing, I note that the probative value of the intercept interviews of shoppers is somewhat diminished as a result of the surveys being conducted in close proximity to the Coles supermarket, which suggests to me a degree of selective sampling, a possibility that is acknowledged in the DAA report, which notes that while 70 per cent of intercept survey respondents said they would use the Coles supermarket and 34 per cent the Woolworths supermarket, this result "possibly" reflected the locations for the sampling, which were closer to Coles.
70. I have also noted the submissions of the Applicant regarding its intention to carry premium items, in addition to mainstream liquor products in each of the beer, cider and spirit categories, ranging from 7% beer, 20% spirits and RTDS and 67% wine, which reinforces that Vintage Cellars is a wine specialist with a greater focus on wine than other stores, while also confirming that the proposed store provides for a different role or 'niche' to BWS Floreat Forum.
71. While these submissions must be measured against the Commissioner's representations that a comparison of the proposed products suggests that the main difference in stock will be that the proposed premises will specialise in Coles' own wines and BWS Floreat Forum currently sells Woolworths' wines, I cannot ignore the Applicant's assertion that the ultimate judge of the public interest should be the public themselves, with the results of the surveys conducted by DAA showing that there is a desire for additional licensed services at the DAC.
72. However, in relation to the Applicant's comments regarding comparison shopping at the DAC and competition leading to more choice for consumers, I consider it germane to note that the sale and supply of liquor is regulated because liquor is a substance

that can have a deleterious effect on people, a factor that clearly distinguishes it from ordinary grocery items that may ordinarily be subject to comparison shopping and that competition in the liquor industry must be considered, not in the context of competition for competitions-sake, but within the context of the proper development of the State's liquor industry.

73. However, in the circumstances of this application, I note that no significant issues have been raised in relation to those matters prescribed in s 38(4) of the Act. As such, I find that:

(c) the relevant population features above average measures of socio-economic advantage/disadvantage and is considered to be a low risk community; and

(d) there are no significant concentrations of at-risk groups in the locality.

74. Similarly, I consider, based on the evidence before me, that the grant of the application will further the primary objects of the Act, particularly the object regarding catering for the requirements of consumers for liquor and related services, with regard to the proper development of, relevantly, the liquor industry in the State (par (c)).

75. It is a matter for the licensing authority to decide what weight to give to the competing interest and other relevant considerations (refer *Hermal Pty Ltd v Director of Liquor Licensing* [2000] WASCA 356. Likewise, it has often been stated by the licensing authority that there is no absolute entitlement to the grant of a licence, even if the applicant meets all the requirements of the Act. Likewise, applications under the Act cannot proceed on the expectation that the commercial interests of an applicant will necessarily coincide with the public interest.

76. In answering the question posed by Buss J, I consider, after having regard to all of the evidence and notorious facts, including the Applicant's evidence as to consumer requirements for the range of liquor products and services it proposes to provide, that 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 reflects the diversity of consumer requirements.

77. I therefore consider that the Applicant has discharged its onus under ss 5 and 38(2) of the Act that the grant of the application is in the public interest. I am similarly satisfied that the applicant has complied with all the necessary statutory criteria, requirements and conditions precedent to the application being granted.

78. Accordingly, a conditional grant of a liquor store licence is made to Liquorland (Australia) Pty Ltd in respect of premises to be known as Vintage Cellars Floreat, subject to the following conditions:

(a) a certificate under s 39 of the Act being lodged before the operation of the licence;



- (b) compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premises;
- (c) all work being completed within 12 months, i.e. on or before 22 February 2016 in accordance with the plans and specifications dated 7 August 2014;
- (d) the recommendations of the Inspector of Licensed Premises on the schedule of requirements dated 3 September 2014 being satisfactorily completed and the Director of Liquor Licensing being notified in writing on completion of that work, at least 21 days before the licensee wishes to commence trading 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 22 February 2016 pursuant to s 62(4)(c) of the Act.

79. When the licence commences operation it will be subject to the following conditions:

- (a) Trading Hours
  - (i) The permitted trading hours in accordance with s 98D of the Act will be as follows:
    - (1) Monday to Saturday, from 8 a.m. until 10 p.m.;
    - (2) Sunday, from 10 a.m. until 10 p.m. (in the metropolitan area only); and
    - (3) ANZAC Day, from 12 noon until 10 p.m.
    - (4) No trading will be permitted on Good Friday or Christmas Day.
- (b) Trading Conditions

The applicant is permitted to sell and supply liquor in accordance with the provisions of s 47 of the Act as it relates to liquor store licences.
- (c) Tasting Condition
  - (i) 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:
    - (1) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
    - (2) Tastings cannot be supplied to juveniles.
    - (3) Glasses to be used for tastings are to be washed in accordance with the provisions of the Director's *Standards of Licensed Premises Policy*, unless single use disposable containers are used.
    - (4) Compliance with the *Food Act 2008* at all times.
    - (5) Tastings per sample must not exceed the following measures:
      - (i) Wine – 50 mls
      - (ii) Beer – 100 mls

(iii) Spirits – 15 mls.

(6) Free drinking water must be made available at all times that samples of liquor are available for tasting.

(d) Compliance With Harm Minimisation Policy

The licensee has lodged a copy of the 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.

80. Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
81. The Applicant is reminded that trading under the licence may not commence without the prior written approval of this authority.
82. 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.
83. 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

23 February 2015