

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: CORANNA RISE PTY LTD

PREMISES: IGA PLUS LIQUOR CORRIGIN

PREMISES ADDRESS: 6 CAMPBELL STREET, CORRIGIN

APPLICATION ID: A000057234

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 19 May 2015

Introduction

- 1 On 16 October 2014, an application was lodged by Coranna Rise Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be known as IGA Plus Liquor Corrigin and located at 6 Campbell Street, Corrigin. The application is made pursuant to ss 47 and 62 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. Objections, pursuant to ss 73 and 74 of the Act, were lodged by Steven Warwick, Caron Green, June Margaret Galbraith, Catherine Jem Matthews, Janeane Anne Mason, Erin Frances Hughes, the Corrigin District Club and Copenclan Nominees Pty Ltd (licensee of the Corrigin Hotel).
- 3 Following receipt of the objections, instructions were issued to the parties on the time frames for lodging their respective evidence and submissions. This is to ensure all parties are afforded procedural fairness and to give effect to the provisions of s 16(11) of the Act. All evidence to be relied upon by the parties was to be filed and served by 23 February 2015. On 16 March 2015, the applicant filed and served its closing submissions, which included new evidence in the form of a letter from Iris Winmar and a letter from Anne Bingham. The applicant's representative did not seek leave to submit this new evidence out of time and the other parties to proceedings were consequently unable to respond to this material. I will therefore give no consideration or weight to the letters from Ms Winmar and Ms Bingham in my determination of this application.
- 4 Pursuant to ss 13 and 16 of the Act the application will be determined on the papers. The submissions and evidence of the parties are briefly summarised as follows.

Submissions by the applicant

- 5 The applicant seeks to establish a liquor store in the country town of Corrigin. Within Corrigin there are three existing licensed premises which provide packaged liquor to the community; the Corrigin Hotel, the Corrigin District Club and the Corrigin Golf Club.

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- 6 According to the applicant, the Corrigin District Club and the Corrigin Golf Club operate under club licences, which only permit the sale of packaged liquor to club members. The range of packaged liquor carried by both clubs is limited and is not the primary focus of the respective clubs. The Corrigin Hotel offers packaged liquor under the 'Bottlemart Express' banner, however there is no separate dedicated browse area with patrons ordering packaged liquor over the bar.
- 7 The proposed liquor store is to be located adjacent to the Corrigin IGA and will be approximately 189m² in size and provides a browse and 'tasting' facility. In addition to the normal range of liquor products, the applicant proposes to stock a range of local WA produced wines, beers and ciders as well as a range of liquor products for people with dietary intolerance and/or lifestyle choices, such as gluten free, organic and low-alcoholic products which are not readily available elsewhere in the locality. According to the applicant, the location of the proposed liquor store (being adjacent to the IGA supermarket) will provide residents of Corrigin with the convenience of one-stop shopping where they will be able to obtain their grocery and liquor products at the same time.
- 8 The applicant submitted a Public Interest Assessment (PIA), which included 80 consumer surveys and various letters of support. A further 150 consumer surveys supporting the application were subsequently submitted. The PIA provided details of the antecedents of the applicant, details of the locality in which the proposed liquor store will be located, the intended manner of operation of the store and addressed the matters set out in s 38(4) of the Act.
- 9 It was submitted by the applicant that the grant of the application is in the public interest for the following reasons:
- being an independent liquor store, the applicant will have the ability to specifically match product range with the customer base, further catering to the interests of the local residents and those resorting to the store. Patrons will have the opportunity to complete a "Product Request Form" resulting in the proposed liquor store sourcing a particular product upon request;
 - patrons will have the opportunity for safe and convenient one-stop shopping as they will be able to utilise the amenity available within the Corrigin IGA when purchasing their household liquor needs;
 - the reputation of the applicant and their combined invaluable local experience, together with the robust Harm Minimisation plan, confirms the applicant's ability to establish and operate a well managed store that causes no harm or ill-health to the locality whilst meeting the interests of the public;
 - the proposed liquor store will provide patrons and those resorting to the store with a safe and convenient browse facility with an extensive selection of local wines, beers and ciders and carry a selection of spirits and liqueurs. Further, the

applicant intends to have a unique focus on local WA produced alcohol products (particularly those producers that are small or just starting out) for the purpose of promoting and developing the liquor industry in the State;

- the proposed liquor store will provide patrons with the opportunity to learn more about wines through wine appreciation information available via the store's trained and knowledgeable staff. Specialised staff training will be provided based upon fully developed modules by RETA (Retail Excellence Training Academy) to enhance staff product knowledge as well as hospitality and RSA skills;
- by catering to the changing needs of the local population, the proposed liquor store will in turn ensure the proper development of the liquor and hospitality industry; and
- the proposed store will offer an amenity not currently available in the Corrigin IGA.

Submissions by the objectors

Steven Warwick

- 10 Mr Warwick is of the view that the population of Corrigin does not warrant a further liquor outlet in town, which already has the hotel and club. The proposed liquor store would not attract any further business for the town because people from outlying towns would not save any money by travelling to Corrigin to purchase their liquor owing to the cost of fuel. In addition, the shopping area is not on the main road driving through town and therefore it is unlikely tourists passing through would stop as a result of the liquor store.
- 11 According to Mr Warwick, there are people in town who already abuse alcohol and they are waiting outside the hotel for it to open, even on weekdays. The proposed liquor store is also located directly opposite a public park which has toilets, BBQ facilities and children's play equipment and the park may become a place of resort for the consumption of liquor which could put other members of the public in danger.

Caron Green

- 12 Ms Green submits that Corrigin, with a population of approximately 1,000 people, already has enough liquor outlets. Corrigin has managed to avoid too many violent and disorderly incidents in the shopping area; however a new liquor store, operating so early in the day, will change that situation. There are a small number of people in town who consume vast amounts of alcohol on a daily basis and they are often waiting in the streets for the hotel to open at 11 a.m. These people then become a nuisance in the shopping area later in the day and if they are able to purchase packaged liquor earlier in the day, they will become a nuisance even earlier. Ms Green has seen firsthand the effects of alcohol being purchased so early in the morning when she lived in Kalgoorlie.

- 13 Also, Ms Green submitted that there is a park a short distance from the proposed liquor store which is used by a small number of drinkers who make a mess in the park and disrespect visitors to the park. The grant of the application may exacerbate this situation.

June Margaret Galbraith

- 14 Ms Galbraith is a long time resident of Corrigin and does not believe the town needs a further packaged liquor outlet. The hotel is well stocked and take-away liquor is available during all hours of trade and the local clubs also provide liquor. If the application is granted, which allows the access to alcohol from 8 a.m. this will, according to Ms Galbraith, result in a rise in anti-social behaviour in the local community.

Catherine Jem Matthews

- 15 It was submitted by Ms Matthews that Corrigin is a small town which does not need a further liquor outlet. Ms Matthews is on the committee of the District Club, which after struggling for years is now a successful business with over 200 members and relies partly on the sale of packaged alcohol to its members.

Janeane Anne Mason

- 16 Ms Mason is concerned that if the application is granted, anti-social behaviour may occur in the park opposite the site of the proposed liquor store. Problems have been experienced in the past with people consuming alcohol in the park, however this no longer occurs but may reappear. Also, there is a cafe next door to the proposed liquor store that is frequented by children who may be exposed to anti-social behaviour.

Erin Frances Hughes

- 17 Ms Hughes does not think Corrigin needs, or is big enough, for a liquor store and she has been happy to purchase her take-away liquor from the hotel or the clubs in town. Having lived in Meekatharra as a child, where there was a liquor store attached to the local supermarket, Ms Hughes has seen fights between intoxicated people outside the supermarket/liquor store. With children of her own now at an age where they want to go to the shops or park on their own, Ms Hughes is concerned for her children's safety if the application is approved.

Corrigin District Club

- 18 It was submitted that the Corrigin District Club has struggled to survive in such a small community, but in the past five years, due to the hard work and commitment of the committee, the club has improved its position. The club is open four days a week and opens further days for functions when required. Corrigin is a small town with a population of approximately 1,000 and a further liquor outlet is not required.

- 19 According to the objector, the proposed liquor store is within 50 metres of the Corrigin District Club and within 100 metres of the Corrigin Hotel. Granting the application would only result in the same volume of liquor being purchased, but now spread across more outlets, which would result in each outlet selling a lesser volume of alcohol and therefore not able to enjoy volume purchase discounts.
- 20 It was also submitted by this objector, that the grant of the application may result in an increase in anti-social behaviour in the park opposite the proposed store.

Coppenclan Nominees Pty Ltd

- 21 Coppenclan Nominees Pty Ltd (Coppenclan) relies upon the following general grounds of objection permitted under s 74(1) of the Act:
- the grant of the application would not be in the public interest;
 - the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; and
 - if the application were granted, undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed premises would be likely to occur, or the amenity quiet or good order of the locality would be lessened.
- 22 It was submitted by Coppenclan that the locality and surrounding area in which the proposed liquor store intends to operate is well serviced by well-established licensed premises that provide a range of liquor and related services to consumers. At present, in addition to the Corrigin Hotel, there is also the Corrigin District Club and the Corrigin Golf Club, which have limited packaged liquor sales under their club licences, and the Corrigin Bowling Club and the Corrigin Tennis club which both operate under a club restricted licence. Consequently, the granting of the application would constitute an unnecessary replication of liquor facilities that already exist within the locality.
- 23 The Corrigin Hotel offers meals seven days a week and offers a good range and competitive packaged liquor special, having joined the purchasing group "Bottlemart Express". There are plans to upgrade the hotel, including improvements to the existing packaged liquor services.
- 24 According to Coppenclan, data from the Australian Bureau of Statistics indicates there are a number of at-risk groups in the locality, with some young people and aboriginals experiencing harm or ill-health due to the use of liquor. The SEIFA index also indicates some disadvantage in the Local Government Area. Data was also submitted on the level of criminal offending in the area. It was submitted that research indicates a positive correlation between outlet density and an increase in crime. Consequently, it was asserted that the grant of the application will result in an unacceptable increase in alcohol-related harm and ill-health in the local community.

- 25 Copenclan submitted 75 consumer surveys by persons who do not support the application. According to Copenclan, the applicant's survey data is insufficient to demonstrate that the grant of the application will be catering to the requirements of consumers for liquor and related services and the applicant's claims of one-stop shopping are misconceived.

Determination

- 26 Corrigin is a small country town located along the Brookton Highway approximately 235 kilometres east-southeast of Perth. Agriculture is Corrigin's primary economic contributor, although the town is also a 'pass through' destination for visitors to Wave Rock which welcomes over 130,000 visitors per annum.
- 27 Corrigin currently has a hotel, which sells packaged liquor to the public over the bar. The hotel does not have a dedicated browse area for its packaged liquor. There are also two clubs in Corrigin which are permitted, under their respective liquor licences, to sell packaged liquor, however the clubs are only permitted to sell packaged liquor to members of the club and not to the general public. It is against this backdrop that the applicant seeks to establish a moderately sized liquor store adjacent to the Corrigin IGA supermarket.
- 28 An applicant for the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(2) of the Act).
- 29 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment 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).
- 30 The factual matters which the licensing authority is bound to take into account 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.
- 31 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.
- 32 The secondary objects of the Act are:

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- 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.
- 33 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 34 The applicant has submitted various consumer surveys which indicate there is support from some members of the local community for the general services proposed by the applicant. Therefore, it is submitted the grant of the application would be consistent with object 5(1)(c) of the Act, in that it will be catering to the requirements of consumers for liquor and related services.
- 35 Conversely, the objectors submit the town of Corrigin is well serviced for packaged liquor, there is some existing alcohol-related harm in the town and granting the application would pose an unacceptable risk to the community.
- 36 Minimising alcohol-related harm is one of the primary objects of the Act; however, as observed by Ipp J in *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258 the harm minimisation object under the Act is not about preventing harm absolutely. Consequently, I need to consider the grant of the application in terms of the risk of any increase in harm and whether any potential increase in harm is unacceptable.
- 37 The objectors' claims that the grant of the application will pose an unacceptable risk to the community are largely speculative. Whilst there may be some existing alcohol-related harm in Corrigin, as there is in most towns and suburbs, the level of existing harm does not appear to be greater than what might normally occur within the community (refer Wheeler J in *Executive Director of Public Health v Lily Creek International and Ors* [2001] WASCA 410). The SEIFA index for Corrigin is just below the benchmark, indicating the degree of disadvantage in Corrigin is only marginally below the average. In consideration of the evidence presented, I am of the view that the potential risks associated with the grant of the application are outweighed by the likely benefits to the community.
- 38 Evidence was presented that, in addition to the objectors, some members of the community do not support the application. However, the consumer surveys by people opposed to the application merely indicate that the respondents are satisfied with the existing packaged liquor outlets in the locality. This does not, in my view, detract from

the applicant's evidence that other members of the local community would welcome the improved product range and services proposed by the applicant's liquor store.

- 39 It is clear from the second reading speech for the *Liquor and Gaming Amendment Act 2006* that it was the intention of government that the amendments to the Act would promote a more competitive, responsible and dynamic liquor environment to better meet the changing expectations of consumers.
- 40 In respect of small country towns, caution should be exercised when granting new licences, particularly liquor store licences, and consideration given to the potential impact upon the overall provision of services to the community.
- 41 However, there is no compelling evidence to suggest the grant of this application will result in an overall diminution of services in the locality to the detriment of the community as a whole. The provision of a dedicated browse facility, regular tastings and increased range of liquor products, will provide an added amenity that is not available in the locality. Competition will also benefit the community. Those members of the community who do not support the application can continue to exercise freedom of choice from where they obtain their packaged liquor products. There is no obligation on members of the community to purchase their packaged liquor from the applicant's store. Members of the Corrigin District Club and the Corrigin Golf Club can continue to support their respective clubs and purchase their packaged liquor from those clubs, while people who find the packaged liquor services provided by the hotel to their satisfaction can continue to utilise those facilities. Furthermore, the proposed upgrade of the existing packaged liquor services at the hotel may benefit the community, once again through improved competition.
- 42 Although the applicant's claims relating to one-stop shopping are not consistent with views expressed by Buss JA in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, I accept that in a small country town there will be an element of convenience for members of the public in the location of the proposed liquor store to the IGA supermarket.
- 43 Pursuant to s 73(10) of the Act, the burden of establishing the validity of any objection lies on the objector. For the reasons stated above, I find that the objectors have failed to establish the validity of their objections.
- 44 Having considered the evidence and submissions of the applicant, I am satisfied that the applicant has complied with all the statutory criteria, requirements and conditions precedent to the application being granted and the applicant has discharged its onus under s 38(2) of the Act. Accordingly, a liquor store licence is conditionally granted to the applicant subject to the following:
- (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 premise;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 16 October 2014.
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to applicant wishing to trade 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 19 May 2016 pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licence

The following conditions will be imposed on the issue of the licence:

Trading hours

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.

Trading conditions

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

General Condition

The licensee is to have and maintain a CCTV system in accordance with the policy of the Director of Liquor Licensing.

Tasting condition

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:

- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.

(d) Compliance with the Food Act 2008 at all times.

(e) Tastings per sample must not exceed the following measures:

(i) Wine – 50 mls

(ii) Beer – 100 mls

(iii) Spirits – 15 mls.

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

General

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.

The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.

45 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.

46 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