

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: COSIMO ZANNINO

PREMISES: SWAN VALLEY LIQUOR & WINE STORE

PREMISES ADDRESS: UNIT 9/660 GREAT NORTHERN HIGHWAY, HERNE HILL

APPLICATION ID: A000212565

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 1 MAY 2017

Introduction

- 1 This is an application by Cosimo Zannino (the applicant) for the conditional grant of a liquor store licence for premises to be known as the Swan Valley Liquor & Wine Store and located at 660 Great Northern Highway, Herne Hill. 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. There were no objections or interventions to the grant of the application.
- 3 As permitted under ss 13 and 16 of the Act, the application will be determined on the written material lodged by the applicant.

A brief overview of the applicant's evidence and submissions

- 4 The proposed liquor store is to form part on the new *Swan Valley Central* group of shops on Great Northern Highway. The store will be comprised of the following components:
 - bottle browse/display area of 88m²
 - cool room of 26m²; and
 - storeroom and staff area of 25m².
- 5 According to the applicant, the proposed store is designed to complement the region as a quality wine and food destination and will feature a dedicated Swan Valley section with local wine, beer and spirits. It was submitted that the Swan Valley is a known tourism region that follows a 32km loop from Guildford, up West Swan Road and along Great Northern Highway, where *Swan Valley Central* and the proposed liquor store is to be located. Consequently, it was submitted that the proposed liquor store will cater to the packaged liquor requirements of locals, day visitors and tourists.
- 6 The applicant submitted a Public Interest Assessment (PIA) to support his application. The PIA provided information on the applicant's proposed manner of trade, the

benefits to the community, the socio-economic profile of the area, existing alcohol-related harm in the locality and likely impact on the amenity of the surrounding community.

- 7 The applicant also submitted evidence of support from the local community for the grant of the application.

Determination

- 8 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: s 38(2). The Act consequently places a positive onus on an applicant, who must therefore adduce sufficient evidence to discharge this burden.

- 9 The factual matters which I am bound to take into account, when considering the applicant's evidence and submissions, are those relevant to the primary and secondary objects of the Act. 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.

- 10 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.

- 11 Ultimately, 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).

- 12 I note the following key aspects of this application:

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- the proposed liquor store will be part of a new group of shops on great Northern Highway in Herne Hill;
 - the store, which is modest in size, is designed to complement the Swan Valley as a wine and food destination;
 - the store will have an area dedicated to Swan Valley wines, spirits and beer;
 - the store will cater to local residents, day visitors and tourists;
 - there is support from the local community for the grant of the application;
 - the grant of the application is unlikely to negatively impact on the amenity of the area; and
 - the SEIFA index for the locality indicates that the locality is not disadvantaged and the existing rates of alcohol-related harm in the area are below the corresponding State rates.
- 13 I have considered the applicant's evidence in its totality, and I find that the proposed liquor store will cater to the packaged liquor requirements of consumers and that the grant of the application would be consistent with the proper development of the liquor and tourism industries in the State. Therefore, the grant of the application would be consistent with object 5(1)(c) of the Act and would also facilitate the use and development of licensed facilities reflecting the diversity of consumer requirements (object 5(2)(a) of the Act).
- 14 I also note that there is nothing in the evidence to suggest that the grant of the application will cause undue harm or ill-health in the community due to the use of liquor. Consequently, I am of the view that conflict does not arise in considering the application with regard to the harm minimisation object of the Act.
- 15 In weighing and balancing the evidence presented by the applicant, I find that the applicant has discharged its onus under s 38(2) and the grant of the application is in the public interest.
- 16 Consequently, I am satisfied the applicant has complied with all of the statutory requirements and conditions precedent to the application being granted, and 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 25 August 2016.

- (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 **30 April 2018** pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licence

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.

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.

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.

- 17 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 18 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 19 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