

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: LIQUORLAND (AUSTRALIA) PTY LTD

PREMISES: LIQUORLAND BALCATT

PREMISES ADDRESS: NORTHLANDS SHOPPING CENTRE 377 WANNEROO ROAD BALCATT

APPLICATION ID: A000057299

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

DATE OF DETERMINATION: 27 JULY 2015

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 located at 377 Wanneroo Road, Balcatta and known as Liquorland Balcatta. The application is made pursuant to s 47 and s 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 two objections lodged to the grant of the application: one by Chris Hatton MLA and the other by Dipak Rajani.
- 3 Pursuant to s 13 and s 16 of the Act, the application will be determined on the written materials lodged. The evidence and submissions of the parties are briefly summarised as follows.

The applicant's submissions

- 4 The proposed liquor store will be located adjacent to a Coles supermarket within the Northlands Plaza Shopping Centre (the Centre), located at 377 Wanneroo Road, Balcatta. According to the applicant, the proposed liquor store will operate as part of its national chain of Liquorland stores, with a selling area of 124m² and carrying Liquorland's usual range of products.
- 5 It was submitted that Liquorland stores are designed to cater for the diverse requirements of consumers for packaged liquor and the target clientele of the proposed liquor store will be persons who buy liquor at the Centre as part of their household shopping, or for whom vehicular access by the well-established regional and local road routes is convenient.
- 6 The applicant submitted a Public Interest Assessment (PIA) which was supported by:
 - a report prepared by MGA Town Planners (the MGA report);

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- a report prepared by Bodhi Alliance (the Bodhi report);
 - a report prepared by Data Analysis Australia (the DAA report); and
 - a witness statement of Karl Weber, State Manager - Operations for the Coles Liquor group in Western Australia.
- 7 According to the MGA report, the establishment of the proposed liquor store would result in the Centre being the only higher order activity centre in the locality providing residents west of Wanneroo Road, in Balcatta and Stirling, the benefit of a full-scale supermarket located in conjunction with a packaged liquor store. Also, some residents in the locality are subject to barriers and impediments to movement. Vehicles may cross the Reid highway to the south from the suburb of Balga through to Westminster at two locations only, Princess Road and Walderton Avenue, therefore reducing the propensity for people to travel south.
- 8 The MGA report also provided details on existing licensed premises in the area, along with details of the relevant activity centre in which they are located. The activity centres provide a range of shopping options, depending upon the size of the centre:
- the Seven Mile Inn, which has a Thirsty Camel drive-through liquor store, is located within a large format retail area on Wanneroo Road, opposite the Stirling Central District Activity Centre;
 - the Balga BWS liquor store is located in the Stirling Central District Activity Centre which features 13,588m² of shopping floorspace;
 - the Princess Road Tavern, which has a Thirsty Camel drive-through liquor store, adjoins the Balga Plaza shopping centre;
 - the Northlands Tavern, which has a Bottlemart drive-through liquor store, is located on the south western side of the Northlands Plaza Shopping Centre;
 - the Main Street Cellars Bottle-O liquor store is located in the Beryl Street Local Activity Centre;
 - Nollamara Cellabratings liquor store is located in the Nollamara Neighbourhood Activity Centre;
 - The Balga Bottlemart is located in the Balga Plaza Neighbourhood activity Centre;
 - the Copper Oak liquor store is located in the Tuart Hill Neighbourhood Activity Centre; and
 - the Stirling BWS is located in the Stirling Village Neighbourhood Activity Centre.
- 9 The MGA report provided demographic data for the locality. It shows that the population in the locality grew by 750 persons per annum between 2006 and 2011 and

the suburbs of Westminster, Nollamara and Balga, which make up 54.1% of the population of the locality, have a ABS Socio-Economic Index for Areas (SEIFA) of 2, while 43.7% of the population located in the suburbs of Balcatta and Stirling have a SEIFA of 7.

- 10 Bodhi Alliance was engaged to undertake an audit of sensitive premises in the area and stakeholder engagement. According to the Bodhi report, there are 52 sensitive use premises in, or on the periphery of the locality, with 10 being within the 800m walkable catchment of the proposed liquor store. Of these 10 premises, only one, Uniting Aid, thought there was a potential to impact the community they service if the application was granted. Uniting Aid provide Coles vouchers to those needing support and have experienced instances of people on-selling the vouchers for a lesser dollar value to gain cash to buy drugs or alcohol. The close proximity of the liquor store to the supermarket might increase the likelihood of person purchasing alcohol instead of food.
- 11 The Bodhi report stated that the social indicators for the locality are mixed, and although there was broad recognition that the existing alcohol-related problems in the locality are impacting 'at-risk' groups including aboriginal persons, migrant communities, children and the socially and economically disadvantaged, the large majority of stakeholders thought that the proposed liquor store would not make problems worse or adversely impact these persons or the broader community due to the current culture of use and high alcohol availability in the area. It was the opinion of stakeholders that the culture of alcohol consumption needs to change across the community but within this locality there were broader issues associated with housing, employment and social interaction.
- 12 The DAA report provided the results of telephone and intercept surveys that were undertaken to gauge the level of support for the proposed liquor store. The surveys indicate that 37% of the respondents to the telephone survey and 66% of the respondents to the intercept survey indicated that they support the application. This level of support increases to 47% and 75% respectively when only purchasers of packaged liquor are considered. Convenient location and the convenience of being able to use the proposed liquor store when doing other shopping at the Centre were the two main reasons for this support.
- 13 According to the applicant, the key benefits for the community from the grant of the application are:
 - one-stop shopping convenience through the co-location of the proposed liquor store with a supermarket;
 - the Store will complement other existing and proposed uses within the Centre and provide additional local employment opportunities; and

- the Store will have comprehensive security measures in place to minimise and deter crime and anti-social behaviour.
- 14 The applicant further submitted that the grant of the application will not negatively impact on the amenity of the area or cause undue harm or ill-health to the local community. In conclusion, the applicant submitted that, when regard is given to its evidence, the grant of the licence is in the public interest because it will:
- cater for the proven contemporary consumer requirements for packaged liquor in the locality; in particular (but not limited to), by providing 'one-stop-shopping' convenience for customers of the associated Coles supermarket and Centre;
 - add to the choice and diversity of facilities available in the locality, whilst complementing other existing and proposed uses within the locality; and
 - thereby aid the proper development of the liquor industry in the State.

Submissions by the objectors

- 14 The objectors raise similar concerns, being:
- there is existing anti-social behaviour occurring in the neighbourhood;
 - there is a risk that the grant of the application may result in alcohol-related harm in the community; and
 - there are already a number of liquor outlets in close proximity to the applicant's proposed liquor store.
- 15 The objectors attached a petition signed by 388 people opposed to the grant of the application for the above reasons.

Determination

- 16 The applicant seeks to establish a convenience style liquor store adjacent to its Coles supermarket in the Northlands Plaza Shopping Centre, located in Balcatta. The Store will trade under the applicant's national Liquorland banner.
- 17 An applicant for the grant of a liquor store licence must, pursuant to s 38(2) of the Act, satisfy the licensing authority that the grant of the application is in the public interest. There is no presumption in favour of the grant of the application, rather the opposite applies.
- 18 The expression 'in the public interest' is not defined under the Act, but imports 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).

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- 19 The licensing authority, in its determinations, is bound to consider the objects of the Act which are set out in s 5. The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
 - to minimize 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.
- 20 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.
- 21 The licensing authority is also entitled (but not bound) to take in to account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 22 In respect of the objections, s 73(10) of the Act imposes an obligation on an objector to establish the validity of their objection. Each objection was the same in substance and form; making generalised statements, however no evidence was submitted to support any of their assertions. Consequently, I find that the grounds of objection have not been made out.
- 23 The applicant contends that one of the key benefits to the community will be the one-stop shopping convenience through the co-location of the proposed liquor store with a supermarket. This co-location of the proposed store and the Coles supermarket is a strong focus of the applicant's case.
- 24 The applicant's evidence establishes that there are nine packaged liquor outlets within a 2km radius of the site of the premises, with many of these outlets located in a shopping activity centre, thereby providing the opportunity for people to purchase their groceries with their liquor requirements. The Northlands Tavern, which has a dedicated packaged liquor drive through facility, is approximately 150m from the proposed liquor store, sharing the Centre's car park. In this regard, whilst acknowledging the presence of another packaged liquor outlet at the Centre, the applicant submitted that it is drive through only and is (according to the MGA report) not located in an optimal position to provide the same level of 'one-stop-shop' convenience that will be provided by the proposed store in conjunction with the

adjoining Coles supermarket. The applicant further contends that the survey results establish support for a 'one-stop-shop' service that is presently unavailable to residents west of Wanneroo Road.

- 25 It is worth observing however that no evidence was submitted to suggest that the applicant's proposed liquor store will carry a range of products not available from the Northlands Tavern and there was no evidence relating to the size of the packaged liquor facility at the Northlands Tavern. I note however, that the MGA report states that the western shopping centre car park surrounds the Northlands Tavern, enabling customers to browse the Bottlemart store. Therefore, the packaged liquor outlet at the Northlands Tavern is not only a drive through facility as submitted by the applicant.
- 26 In *Woolworths (WA) Ltd v Liquorland (Australia) Pty Ltd & Ors*, unreported, FCt SCt of WA; Library No 940553; 7 October 1994, it was held that the Liquor Licensing Court had not erred in refusing the grant of a licence to an applicant for a liquor store licence proposed to be located in a shopping centre, although there was no other liquor store under the roof of that shopping centre. In that case, the evidence was that there was an existing packaged liquor outlet very near to the supermarket. The existing outlet and the supermarket were separated by a parking area which served them both. It was submitted by the applicant in that case that a desire for one-stop shopping was now accepted as being objectively reasonable and therefore, every supermarket should have a liquor store. However, Malcolm CJ, Rowland J and Anderson JJ held that the Liquor Licensing Court Judge had not erred in finding as a fact that, in view of the presence of the existing outlet so close to the supermarket as to almost be part of the shopping centre, any subjective requirement of the relevant section of the public for a liquor store to be located within the supermarket was not objectively reasonable. It was held that although the tavern was not under the main roof of the Shopping Centre complex, it was properly regarded as being sufficiently adjacent to service the requirement of "one-stop shopping" (emphasis added).
- 27 Whilst the above case was determined under the old provisions of s 38 of the Act, it nonetheless provides some guidance as to the weight to be given to the evidence and the subsequent public interest considerations under the Act. Simply because some members of the community may find the proposed liquor outlet convenient for their packaged liquor purposes, does not mean the application is necessarily in the public interest. There needs to be a degree of reasonableness to the subjective evidence submitted to support the application.
- 28 Considering the application in terms of the objects of the Act is a mandatory requirement (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227). Object 5(1)(c) refers to catering to the requirements of consumers for liquor and related services whilst having regard to the proper development of the liquor industry. Minimising alcohol-related harm and regulating the liquor industry are also primary objects of the Act.
- 29 In LC 44/2010 the Liquor Commission stated at [41]:

“..... an intended outcome of the amendments to the Act was not a proliferation of licences (refer *Parliamentary Debates, WA parliament, vol 409, p 6342*). Licences should not be granted simply because an applicant ‘has a good idea’ or would like to establish a business involving the sale and supply of liquor. The private interests of an applicant should not be confused with the public interest. Such an approach would not be consistent with the Act or the objects of the Act (refer s 5) which includes minimizing alcohol-related harm and having regard to the proper development of the liquor industry.”

- 30 Further, Heenan J in *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384, said:

“Whether any particular licence application will or will not contribute to the proper development of the liquor industry or whether it will facilitate the use and development of premises in a manner which reflects the diversity of the requirements of consumers in this State are questions of fact, degree and value judgement..... I have previously concluded that the primary objects of the act set out in s 5(1)(c) are not the only or the exclusive objects of the Act and, except to the extent of any inconsistency, do not restrict considerations of the public interest required by s 33(1) or s 38(2).

Because the appellant has emphasised the potential significance of the primary objects of the Act set out in s 5(1)(c), it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with the measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it.”

- 31 The SEIFA data (index of 2) indicates that the majority of the population in the locality is quite disadvantaged (54.1%). The evidence submitted indicates that:

- the locality has an Aboriginal population (1.9%) which is lower than that of the State (3.1%) but higher than the Greater Perth area (1.6%). However results across the suburbs were mixed with the suburbs of Nollamara (2.6%), Westminster (2.4%) and Balga (3.7%) all having a higher percentage of Aboriginal persons and Tuart Hill, Balcatta, Hamersley and Stirling having less than the Greater Perth area;

- unemployment in the locality (3.3%) is less than Greater Perth (4.8%) and the State (4.7%), although these results were mixed across the suburbs with high concentrations of unemployment in Balga (8.5%) and Westminster (7.7%); and
 - individual, household and family incomes are less than the State and Greater Perth area as at 2011.
- 32 The telephone survey indicates that the majority of respondents from the disadvantaged suburbs support the application while the majority of respondents from the relatively advantaged suburbs do not support the application (Tables 19 and 21). Table 26 indicates that of those respondents from the disadvantaged suburbs who support the application, the majority indicated that convenient location was by far the main reason for that support.
- 33 Table 33 indicates that the majority of respondents to the telephone survey from the relatively advantaged suburbs of Stirling and Balcatta would either never use the applicant's proposed liquor store or only use it once or twice a year. Respondents who are likely to use the proposed liquor store from the North East and South East portion of the locality are only marginally less than those from the North West and South West. Further, when only respondents who purchase packaged liquor were asked how often do they think they would purchase liquor from the applicant's proposed liquor store, the majority of respondents from the advantaged suburbs in the North West and South West of the locality indicated only once or twice a year or less (Table 35).
- 34 Table 48 indicates that the Centre is well patronised by shoppers from the disadvantaged areas in the North East and South East of the locality. The intercept survey shows a greater level of support for the grant of the application, as expected, however only 8.1% of respondents visit the Centre because of the Coles supermarket. Also, Table 60 indicates that a reasonable percentage of all respondents (15.7%) to the intercept survey purchase their packaged liquor from the Northlands Tavern (the third most popular venue behind Dan Murphy's (23%) and Main Street Cellars (19.7%)), although the Northlands Tavern is the most popular venue for respondents from the North West part of the locality (41.7%).
- 35 The survey data suggests that there are no barriers or impediment to movement in respect of access to the Centre, contrary to the suggestion in the MGA report. Therefore, a significant proportion of persons from the relatively disadvantaged suburbs, who are more susceptible to alcohol-related harm, are likely to use the proposed liquor store.
- 36 Whilst the crime and health data does not reflect a locality overburdened with alcohol-related harm, the consultation with local stakeholders, as reflected in the Bodhi report, revealed that there was broad recognition that the existing alcohol-related problems in the locality are impacting 'at-risk' groups including aboriginal persons, migrant communities, children and the socially and economically disadvantaged, albeit that the

majority of stakeholders thought the proposed liquor store would not make matters worse due to the current culture of use and high alcohol availability within the locality.

- 37 The potential for harm is a relevant consideration (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [200] WASCA 258) and the harm minimisation object of the Act encompasses the possibility as much as it does the probability of harm occurring.
- 38 In my view, this application is mostly predicated on providing a convenience to persons shopping at the Coles supermarket in the Centre. This is acknowledged by the applicant in its PIA where it states that the proposed liquor store will provide a convenient one-stop shopping convenience function for those shopping at the Centre, particularly those shopping at the associated Coles supermarket, although, only 8.1% of respondents to the intercept survey visit the Centre because of the Coles supermarket. It is also important to observe that there is an acknowledgment in the applicant's evidence that the Northlands Tavern does provide for the one-stop shopping requirements of patrons of the Centre, only it is submitted that this not at the same level of one-stop-shop convenience that would be provided by the applicant's proposed liquor store.
- 39 Consequently, in consideration of the evidence presented, I am of the view that the grant of the application is not in the public interest because:
- people attending the Centre can already avail themselves of the convenience of one-stop shopping by purchasing their packaged liquor in conjunction with their shopping needs by using the Northlands Tavern;
 - The Northlands Tavern is a popular venue for persons in the locality seeking to buy packaged liquor;
 - The consumer requirement that the applicant relies upon is not objectively reasonable;
 - the locality in which the proposed liquor store is to be located is already well serviced for packaged liquor outlets. There are nine outlets within a 2km radius of the proposed liquor store and many of these outlets are located in a shopping activity centre thereby providing an opportunity for people to purchase their groceries with their liquor requirements;
 - the majority of the population (54.1%) of the locality surrounding the proposed liquor store are relatively disadvantaged (a SEIFA index of 2) and therefore at an increased risk of alcohol-related harm;
 - the Centre is popular with persons from the disadvantaged suburbs (the applicant's evidence is that vehicular access to the Centre is convenient due to the well-established regional and local road routes, and this is reflected in the survey data);

- there is evidence from local stakeholders that the existing alcohol-related problems in the locality are impacting 'at-risk' groups including aboriginal persons, migrant communities, children and the socially and economically disadvantaged; and
- notwithstanding the survey evidence, the grant of the application would not be consistent with the proper development of the liquor industry due to the unnecessary proliferation of packaged liquor outlets in the area.

40 As stated by Heenan J (in *Woolworths* supra), one of the objects of the Act is to regulate the sale, supply and consumption of liquor and this statutory policy of regulation is entirely consistent with the measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of requirements in this State.

41 I therefore find that the applicant has failed to discharge its onus under s 38(2) of the Act and the application is therefore refused.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING