

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: VHT Perth Pty Ltd
(represented by Ms Linda Huynh, Secretary)

Interveners: Commissioner of Police
(represented by Mr David Anderson of State Solicitor's Office)

and

Executive Director of Public Health

Objectors: Mr Hoane Phi Neuyen
Mr Yee Leng Tong

Commission: Mr Eddie Watling (Presiding Member)
Ms Helen Cogan (Member)
Dr Eric Isaachsen (Member)

Matter: Application for a review of decision by the Director of Liquor Licensing pursuant to section 25 of the *Liquor Control Act 1988*.

Premises: VHT Perth, 410-412 William Street, Perth

Date of Hearing: 31 May 2012

Date of Determination: 25 July 2012

Determination: The application is refused

Authorities referred to in determination:

- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *Busswater Pty Ltd v Mr KV House and Mrs L V Verhoog (LC 17/2010)*

Background

- 1 On 25 August 2011, an application was lodged by VHT Perth Pty Ltd (“the applicant”) with the Director of Liquor Licensing (“the Director”) for the conditional grant of a liquor store licence for premises to be known as VHT Perth Pty Ltd situated at 410-412 William Street, Perth.
- 2 On 24 October 2011, a notice of objection was lodged by Mr Hoane Phi Neuyen and also by Mr Yee Leng Tong.
- 3 On 24 October 2011, a notice of intervention was lodged by the Executive Director Public Health (“EDPH”).
- 4 On 30 November 2011, a notice of intervention was lodged by the Commissioner of Police (“the Police”).
- 5 On 30 January 2012, a further submission was lodged by the EDPH.
- 6 In decision A219980, dated 21 February 2012, the Director refused the application.
- 7 On 20 March 2012, pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”), VHT Perth Pty Ltd lodged with the Liquor Commission (“the Commission”) an application for a review of the decision of the Director.
- 8 On 23 March 2012, a notice of intervention in relation to the review proceedings was lodged by the Police.
- 9 On 26 March 2012, the applicant lodged amended grounds of appeal – the documents lodged with the Commission no longer contained information that was not before the Director at the time of the determination.
- 10 On 15 May 2012, Mr Yee Leng Tong lodged a further submission.
- 11 On 18 May 2012, the Police lodged a submission in support of the intervention notice.
- 12 A hearing before the Commission was held on 31 May 2012.

Submissions on behalf of the applicant

- 13 The applicant in its Public Interest Assessment (“PIA”) submits that it believes that the practices and procedures set out are sufficient to satisfy the obligations under the Act. The PIA asserts that its client base consists of locals, expats, migrants from Asian countries and tourists (including international students and mining workers). In its view there is a demand from these groups for food and

drink that is consistent with their culture. Alcohol is utilised in Asian cuisine, is important in socio-cultural life and is also an important adjunct to hospitality.

- 14 VHT Perth has operated on William Street for close to 30 years and has a well-known reputation as a one stop shop for Asian groceries, with an extensive range of food products from all over the globe, particularly focusing on the Asian countries of China, Malaysia, Taiwan, Thailand, Japan and Korea.
- 15 It was submitted that there have been multiple requests over the past few years to include alcohol in the range of commodities provided and this would assist in meeting the needs of tourists who visit this part of William Street and stock up on their foods and purchase souvenirs throughout their stay in Perth.
- 16 The packaged alcoholic beverages proposed to be sold fall between two categories – Asian and Australian themed/originated.
- 17 Further to its PIA, the applicant lodged four letters of support and a petition of support signed by 273 individuals. The latter was collected over a week long period. It was submitted that these documents were reflective of the surrounding communities and hence prove that the application is in the public interest. The letters of support were provided by:
 - Lido Restaurant;
 - AM Equity Pty Ltd;
 - Wing Hong Pty Ltd; and
 - The Chung Wah Association Inc.
- 18 It was submitted that in relation to harm and ill-health issues, the proposed security measures, including expanded CCTV, and a limitation of trading hours to the normal grocery daylight trading period (6:30 pm closing), will be sufficient to meet the requirements for the responsible sale of packaged alcohol as prescribed by the Act.
- 19 The alcohol storage and display section will be located in the far left corner of the store and separate from the main aisles. Constant staff monitoring, increased staff training/education and storefront roller shutters for security will all contribute to reducing harm.
- 20 In response to the EDPH it was submitted that the risk of liquor related harm and ill health resulting from the introduction of the proposed premises is minimal and can be ameliorated by the stringent and effective management practices as outlined in paragraphs 18 and 19 above.
- 21 The conditions recommended by the Police were readily accepted. These covered trading hours, CCTV, harm minimisation, prohibition of

(unaccompanied) juveniles, signage, mandatory RSA training, training register, incident register, compliance with City of Perth requirements, presence of an approved manager during trading hours and no discounting or advertising of liquor.

- 22 The applicant submitted that the proposed practices are aimed to minimise the harmful effects of alcohol, and the possibility of negative impact on the community through the introduction of the outlet, is small and probably not measurable.
- 23 Overall the outlet will benefit not only local customers but also Perth's migrant population as well as the increasing tourism market, including international travellers. With the majority of restaurants in the area being BYO, having a liquor store within walking distance will also increase the restaurants' attractiveness as well as contributing to customer satisfaction.
- 24 The granting of the licence will provide benefit to the community and encourage economic growth in the area and therefore it is in the public interest to approve the application.

Submissions on behalf of the Commissioner of Police

- 25 The Police intervened for the purpose of making representations on the question of whether:
 - if the particular application was granted and conditions not imposed, public disorder or disturbance would be likely to result, or as to any other matter relevant to the public interest.

The following reasons were provided for the intervention:

- there are already sufficient liquor outlets in the area to satisfy the needs of the public;
- the applicant has not submitted sufficient evidence to discharge its onus under section 38(2) of the Act;
- if the application were granted it would likely negatively impact on the amenity of the locality;
- the applicant has not demonstrated that it will 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 of the state;
- one stop shopping and convenience is not a primary objective of the Act when consideration is given to the granting of a liquor licence.

- 26 After outlining the legal principles governing the review process, the Police commented that in and around the area of the proposed premises there are already significant alcohol related issues including a level of public disorder. This is supported by the number of alcohol related incidents reported in the evidence relied upon in the form of data from the Incident Reports and the data from CAD (Computer Aided Dispatch).
- 27 The Police are concerned that if the application is approved, an unconditional grant would only add to the disorder already occurring in the locality.
- 28 A set of conditions were proposed, as referred to in paragraph 21 above, should the application be granted.
- 29 The Police observed that the applicant had accepted the conditions sought as being appropriate and agreed to be bound by them. However, notwithstanding this concession, the question of whether this application is in the public interest at all, and whether the applicant has satisfied its onus of proof under section 38(2) of the Act, remains for the Commission to determine.

Submission on behalf of the Executive Director of Public Health

- 30 The purpose of the intervention was to submit that, if the licence was granted, harm minimisation conditions ought to be imposed. The significant background issues were :-
- the premises are located in the suburb of Perth and are a short distance from Northbridge;
 - Perth and Northbridge have an established record of high levels of alcohol-related violence;
 - in the absence of harm minimisation conditions, increasing the availability of packaged liquor in an environment that already experiences high level of alcohol-related harm poses a greater risk of further harm/ill-health occurring;
 - there are harm and ill-health concerns associated with the proposal for the liquor store to be integrated within the VHT supermarket; and
 - if the licence is to be granted, licence conditions that maintain the separation of liquor from the general grocery items, would be an important harm minimisation approach.
- 31 On 27 September 2011, a representative from the Drug and Alcohol Office, on behalf of the EDPH contacted the applicant's representative to seek clarification regarding the area of the supermarket that is proposed to be licensed. The following information was provided:

- the licensed area will be delineated from other grocery items at the store by a permanent barrier that restricts general entry and visibility of liquor products;
 - the licensed area will have a designated cash register for liquor sales;
 - the size of the proposed “self-contained alcohol section within the grocery store” will be relatively small in size in comparison to the grocery store as a whole; and
 - the variety of liquor proposed for sale will be predominately Asian in theme and origin. This will be supplemented by a range of well-known Australian wines and beers, which will be targeted at the local tourist market.
- 32 On 7 October 2011, a representative of the Drug and Alcohol Office again visited the proposed liquor store for further consultation with the applicant to determine how the liquor store is intended to be barricaded from the general supermarket items at the store.
- 33 With regard to harm minimisation, the EDPH submitted that the co-location of liquor within the supermarket environment normalises alcohol and sends a message to the community that alcohol, as an ordinary commodity, is no different from other grocery items. The normalisation of alcohol, as an ordinary commodity, could lead to an increase in purchases, consumption and ultimately harm.
- 34 It was submitted that there are also harm and ill-health concerns in relation to the location of the proposed liquor store being in an environment that already experiences high levels of alcohol-related harm, which could be ameliorated by imposing harm minimisation conditions on the licence.
- 35 The following conditions were submitted by the EDPH for consideration to be included in the licence should the application be approved:
- liquor products at VHT Perth grocery store are to be distinctively delineated from the grocery section by a permanent barricade with its own exit and entry point;
 - there is to be a designated point of sale within the licensed area;
 - the liquor store is not permitted to trade past 6:30 pm on any day of the week; and
 - the liquor store is permitted to sell only Asian and Australian branded liquor products.

- 36 On 30 January 2012, the EDPH responded to the applicant's further submissions and advised that the applicant is amenable to the conditions suggested in the intervention – see paragraph 35 above.

Submissions on behalf of the objectors

- 37 Objections lodged by Mr Yee Leng Tong and Mr Hoane Phi Nguyen were generally based on the perceived adverse effect the granting of the licence would have on the amenity, quiet or good order of the locality. A further submission was lodged on 15 May 2012 from Mr Yee Leng Tong reiterating earlier expressed concerns.

Determination

- 38 Pursuant to section 38(2) of the Act, an applicant for the grant of a liquor store licence must satisfy the licensing authority that granting the application is in the public interest.
- 39 Advancing the objects of the Act as set out in section 5, is also relevant to the public interest considerations, (refer *Palace Securities Ltd v Director of Liquor Licensing (1992) 7 WAR 241*).
- 40 To discharge its onus under section 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community.
- 41 In this regard, it is not sufficient for an applicant to merely to express opinions and make assertions about the perceived benefits of its application. Such opinions and assertions must be supported by an appropriate level of evidence (refer *Busswater Pty Ltd v Mr KV House and Mrs L V Verhoog (LC 17/2010) at [36]*).
- 42 In this case, the applicant seeks to establish a liquor store of approximately 30 square metres to be situated within an existing supermarket located in William Street, Perth. The supermarket predominantly stocks Asian groceries. It is proposed that the packaged alcohol available would be Asian category products and Australian category products, the latter intended for tourists and local residents.
- 43 Assertions relating to the perceived benefits to the public of the grant of the application were supported by four letters and a public petition comprising of 273 signatures. Little weight was given to either of these documents– the letters being predominantly predicated on private interest rather than public interest and the petition expressed to be in support of the liquor store provided no information other than the names of the signatories.

- 44 Whilst the grounds of objection by Mr Hoang Phi Nguyen and Mr Yee Leng Tong are based on the perceived adverse effect the granting of the licence would have on the amenity, quiet or good order of the locality, insufficient data was provided to substantiate such an outcome. The validity of these objections has therefore not been established as required by section 73(10) of the Act.
- 45 The interventions from the Police and the EDPH both sought to impose conditions on the licence in the event that it was granted, rather than oppose the application absolutely. The Commission notes the acceptance by the applicant of the proposed harm minimisation measures and the consultative manner in which this occurred. Both interveners were explicit that the conditions ought to be viewed as recommendations and that the decision on whether or not to grant the application lay squarely with the Commission.
- 46 The Commission notes the submission by the EDPH that “The co-location of liquor within the supermarket environment normalises alcohol and sends a message to the community that alcohol is no different to other grocery items”. This may be so, however in the absence of any supporting evidence for the notion of harm arising from the “normalisation” of use and availability of liquor, the Commission could give little weight to the argument.
- 47 The Commission is however, very cognisant of the harm and ill-health and anti-social issues that can arise from the consumption of alcohol and these are matters that require a much wider and co-ordinated approach by a number of regulatory authorities and government agencies.
- 48 In arriving at its determination the Commission is required to evaluate the quality and level of evidence presented by the applicant to discharge its obligations under the Act. The Act places a clear onus on an applicant to adduce sufficient evidence to satisfy the licensing authority that the grant of the application is in the public interest.
- 49 The materials submitted in support of the application cannot be given a high weighting for reasons stated in paragraph 43 and on examination of all the material before it, the Commission is not persuaded that there is sufficient evidence that the granting of this licence in a locality that already has a high outlet density for the sale of alcohol products is in the public interest.
- 50 The applicant has thus failed to discharge its onus under section 38(2) of the Act and the application is therefore refused.



EDDIE WATLING
PRESIDING MEMBER