



IN THE LIQUOR LICENSING)
COURT OF WESTERN AUSTRALIA)
NOVEMBER 12, 13, 14, 15, 16,)
19, 20, 21, 22 and DECEMBER 4)
1990)

CRT 33/90

IN THE MATTER of an application by
CHRISTOFF & SONS PTY LTD for the
conditional grant of a liquor store licence
for premises to be known as BUDGET
LIQUOR

and

IN THE MATTER of objections by
COLES MYER LTD trading as
Wellington Village Liquor Store

and

CRT 59/90

IN THE MATTER of an application by
COLES MYER LTD for the conditional
grant of a liquor store licence for premises
to be known as LIQUORLAND
MIRRABOOKA

and

IN THE MATTER of objections by
ALJOHN (1982) PTY LTD trading as the
Mirrabooka Tavern and CHRISTOFF &
SONS PTY LTD

and

CRT 73/90

IN THE MATTER of an application by
COLES MYER LTD for the conditional
grant of a removal of a liquor store
licence for premises to be known as
LIQUORLAND MIRRABOOKA

and

IN THE MATTER of objections by
ALJOHN (1982) PTY LTD trading as the
Mirrabooka Tavern and CHRISTOFF &
SONS PTY LTD.

Mr D Mossenson appeared for Christoff & Sons Pty Ltd and Aljohn (1982) Pty Ltd (instructed by Messrs Phillips Fox)

Mr R Meadows appeared for Coles Myer Limited (instructed by Messrs Freehill Hollingdale and Page)

Reserved decision of His Honour Judge Greaves
1 February 1991

GREAVES J:

1. There are three simultaneous applications for consideration in the present case. Christoff and Sons Pty Ltd ("Christoff") began with evidence in support of its application for the conditional grant of a liquor store licence in respect of proposed premises being Shops 24 and 25 at the Mirrabooka Square Shopping Centre, Mirrabooka.

2. Coles Myer Limited ("Coles") trading as Wellington Village Liquor Store objected to the application. Coles also applied for the conditional grant of a liquor store licence at the Mirrabooka Shopping Centre for premises to be known as "Liquorland Mirrabooka". At the same time, in respect of the same proposed premises, Coles applied in the alternative for the conditional grant of a removal of its liquor store licence from its premises at Wellington Village Liquor Store to the Mirrabooka Square Shopping Centre.

3. The Director of Liquor Licensing specified an affected area of 3 kilometres radius from each of the proposed premises at the Mirrabooka Square Shopping Centre. Needless to say, the premises of the Wellington Village Liquor Store are within a 3 kilometre radius of each of the proposed liquor stores. Also within that 3 kilometre radius, but very much closer, are the premises of the Mirrabooka Tavern. Aljohn (1982) Pty Ltd which trades as the Mirrabooka Tavern and Christoff, the registered proprietor of the premises, objected to the two applications of Coles, whose evidence I heard at the same time.

4. The evidence in support of each of these applications is evidence in the others. The onus is upon each applicant to show that the grant of the application is necessary to provide for the reasonable requirements of the public for liquor and related services in each affected area. Coles' application for removal is made in the alternative to its application for an original grant.

5. It will be convenient to deal with the two applications for original grants first. Since these are competing applications in respect of which it is fair to say there is no truly independent objector, it will also be convenient to consider those two applications in the one set of reasons.

6. Christoff called Mr George Armstrong (Exhibit 33) to give evidence. He is a director of Perron Investments Pty Ltd which owns the Mirrabooka Square Shopping Centre. He has been the property manager of the Perron Group of Companies for ten years. Perron Investments Pty Ltd purchased the Mirrabooka Square Shopping Centre in February 1989. At paragraph 11 of Exhibit 33, Mr Armstrong proceeds to describe the centre:

"At the time Perron acquired the Centre, it was about eleven years old and comprised a total area of approximately 18,500 square metres comprising 64 shops.

Since the purchase of the Centre Perron carried out and completed extensive modernisation and expansion of the existing shopping centre.

The size of the modernised and expanded Centre is now approximately 36,100 square metres comprising 105 shops.

The changes to the Centre were completed earlier this year and on the 28th May 1990 the centre was officially opened for trade.

The completed Centre is now the fourth largest integrated shopping complex in Western Australia.

As an integrated shopping complex the centre provides:

- (1) *a wide range of consumer goods and services ranging from day to day convenience requirements, a comprehensive range of fresh foods, a large variety of clothing, household goods, and gift items to financial, travel and other services in a well supervised and airconditioned environment;*
- (2) *sufficient conveniently located car parking bays so that shoppers may park their car and use all of the above with the maximum of convenience;*
- (3) *wide shopping malls, abundant public seating and security guards to ensure shoppers can go about their business unhampered.*

... prior to the renovations and extensions 1,200 parking bays were available on site, however, the Centre now provides in excess of 2,100 parking bays for the convenience of its customers.

... the Centre is unique in Western Australia and possibly Australia in that it incorporates the two discount department stores of Big W and K-Mart together with the two leading supermarket chains of Coles New World and Woolworths and a smaller independently run Supa Value Store."

7. The premises of the Mirrabooka Square Shopping Centre are depicted in Exhibit 22. They are more conveniently and colourfully depicted in part of a document annexed to the proof of Mr Armstrong (Exhibit 33) described as "GIA8" and referred to frequently in the course of these proceedings. GIA8 does not show to scale the whole of the Coles and K Mart premises which form part of the Centre. It equally does not show the location of the proposed Liquorland Liquor Store. Exhibit 22 depicts the location of each of the two proposed liquor stores. The location of the Centre itself is depicted in GIA4 to Exhibit 33. For the record it is convenient to observe that counsel for Christoff produced an embellished copy of GIA4 during the course of his closing address referring to certain of the premises adjoining the Mirrabooka Square Shopping Centre and the evidence in respect of them.

8. At paragraph 28 et seq of Exhibit 33, Mr Armstrong gives evidence of "door counts" at the Mirrabooka Square Shopping Centre. He refers to the evidence of Mr Walton (Exhibit 45), who is the Centre Manager. The evidence of Mr Armstrong and Mr Walton must be viewed with one caveat. The mechanical door counts to which they refer reflect people going in and out of five of the six official entries to the Centre. The recorded numbers must be halved and I accept the submission on behalf of Coles at paragraph 15.5 of the written submissions that this evidence suggests that at least 80,000 to 90,000 people per week visit the Centre. It is not correct to say, as Mr Armstrong does at paragraph 35 of Exhibit 33, that 186,000 visited the centre during the period to which he refers. It should also be observed that the mechanical door counts do not include after hours entry number two on GIA8 nor any record of people who pass to and from through escape passage number twelve or service passage number eight. Equally, the mechanical door counts do not purport to distinguish the people counted by age. Otherwise, I accept the evidence of Mr Armstrong at paragraph 31 of Exhibit 33 that the number of people visiting the Centre has increased between two and three times since its extension and renovation.

9. Mr James McCollum gave the principal evidence on behalf of Christoff (Exhibit 24). He is a director of Aljohn (1982) Pty Ltd which is the licensee of the Mirrabooka Tavern, identified by the numeral 10 on GIA4. Mr McCollum is the approved manager of the Mirrabooka Tavern. He describes "*the Budget Liquor Store site and location*" at paragraph 40

et seq of his proof of evidence (Exhibit 24). The proposed premises are identified by the numerals 24 and 25 on GIA8. At paragraph 45, Mr McCollum states:

"In selecting Shops 24 and 25 for the liquor store, I was particularly happy with the following:

- (a) the external and internal access to allow after hours trade;*
- (b) the suitability of the location being close to the specialty food shops;*
- (c) being within the busy part of the Centre;*
- (d) the traffic flow at the location;*
- (e) the size of the shops 24 and 25;*
- (f) the taxi rank directly outside;*
- (g) the public telephones opposite the site;*
- (h) the type of traders nearby in that section of the Centre which will compliment the liquor store;*
- (i) the accessibility and convenient location to the car park;*
- (j) the easy access for stocking and unloading at the premises;*
- (k) the size of the frontage of shops 24 and 25 and the shops' visibility;*
- (l) the proximity of the parcel pick-up;*
- (m) the location near to Woolworths Supermarket and being in the same part of the Centre as Big W; and*
- (n) the location near to other convenience features such as public toilets."*

10. The proposed premises are depicted in Exhibit 21. There are certain observations which may very quickly be made about this evidence. It is a fact that the proposed premises provide for access to the shopping mall at entry number three and alternative external access at the north-east corner of the premises. It is a fact that the proposed premises are close to speciality food shops being those numbered 20, 21, 22, 23, 26, 27, 28 and 29-30 on Exhibit GIA8. It is a fact that a taxi rank is located immediately to the east of the proposed premises. It is a fact that the proposed premises are located immediately adjacent to the western end of the northern car park of the Mirrabooka Square Shopping Centre. It is a fact that the proposed premises are located immediately adjacent to a service yard. It is a fact that the proposed premises are located immediately to the south of the Woolworths Supermarket.

11. If the evidence of Mr McCollum suggests that the location of the proposed premises was chosen from a range of alternatives at the Mirrabooka Square Shopping Centre and is thereby enhanced in its suitability for licensed premises, I do not accept that suggestion. The evidence of Mr Armstrong is plain that at all material times the owners of the Mirrabooka Square Shopping Centre have identified Shops 24 and 25 as a potential liquor store. The evidence is that no other premises are presently being offered for lease for that purpose and

that only one per cent of the gross leasable area of the Mirrabooka Square Shopping Centre remains unlet. In this regard, I refer to page 178 of the transcript.

12. I have said already that the location of the proposed Liquorland premises is depicted on Exhibit 22 while the floor plan is Exhibit 35. Mr Maurice Abel is the General Manager of the Liquorland division of Coles Myer Limited. At paragraph 4.1 of his proof of evidence (Exhibit 63), Mr Abel gives the following evidence about the Coles New World/K-Mart variety store at the Mirrabooka Square Shopping Centre:

"I have inspected the Coles Supermarket/K-Mart store and made enquiries, and I am aware that:

- (a) the Coles' Supermarket/K-Mart store has an area of approximately 13,000 square metres and is easily accessible from the centre mall which in turn is easily accessible from the outside car parking area.*
- (b) The Coles' Supermarket/K-Mart store has been operating since May of this year.*
- (c) The Coles' Supermarket/K-Mart store has some thirty checkouts (to accept and register purchases), and six internal checkouts. Its average weekly turnover is approximately \$455,000 and the weekly turnover is steady.*
- (d) Based on transaction counts the average number of customers per week is approximately 43,000.*
- (e) Based on the turnover and the number of customers per week, the average amount spent by each customer is about \$10 ..."*

13. From this evidence, it was submitted at paragraph 15.6 of the written submissions on behalf of Coles that I should conclude that over 43,000 people per week use the Coles/K-Mart variety store within which the proposed Liquorland store will be situated. The premise upon which Mr Abel's evidence in this regard is based may be reliable but it is not clear. I admitted the evidence against objection to consider the weight which should be attached to it. In my opinion, the evidence leads to no more than the obvious conclusion that a large number of people patronize the Coles' Supermarket/K-Mart store each week. I do not find the evidence sufficiently reliable in its foundation to reach any conclusion about the number of such customers. Whatever the number, it is safe on the evidence as a whole to conclude that both Coles/K-Mart and Woolworths/Big W attract substantial patronage to the Mirrabooka Square Shopping Centre during trading hours.

14. Mr Abel goes on to describe the proposed premises at paragraph 5.5 et seq of his proof of evidence (Exhibit 63):

"Factors which led to the choice of the Liquorland Mirrabooka site include the excellent public accessibility to the Centre and the Coles' Supermarket/K-Mart store, and a perceived market demand.

Initially, Super K-Mart (a separate and distinct division within the Coles Myer group) secured space in the new expanded section of the Mirrabooka Square Shopping Centre.

Liquorland unsuccessfully attempted to secure space from Super K-Mart for a Liquorland store. The Centre following its expansion would have two major and two

junior department stores/supermarkets, in the vicinity of 100 speciality stores and yet, no liquor outlet. Liquorland did not succeed in securing space. It was offered space only on the basis the space would be "definitely" taken and rental paid. Liquorland could not agree as no successful liquor licence application had been made by it – it had no licence."

15. Mr Abel goes on to describe the "facilities and fittings" at the proposed liquor store in paragraph 6 of Exhibit 63:

"Liquorland Mirrabooka will be easily accessible from:

- (a) the centre mall, for patrons with or without trolleys;*
- (b) from the outside car parking areas (via the centre mall) through entries to the Centre for patrons with or without trolleys;*
- (c) from the Coles' Supermarket/K-Mart store for patrons with or without trolleys.*

Liquorland Mirrabooka has been specifically designed to be easily accessible to all patrons at the Centre.

... Liquorland Mirrabooka fittings will include:

- (a) a refrigerated dairy type display case over 6 metres long along one of its walls to display premium beers, wines and coolers;*
- (b) a cool room with full length glass access doors for the storage and selection of bulk beers, wines, ciders, casks of wine and coolers;*
- (c) special extra large shelving (as used in all Liquorland stores) lining the walls and carrying an extensive range of products;*
- (d) wine display units for the display of wines.*

The cool room will be large enough to hold ten pallets of chilled beer as well as reserves of chilled wine casks and soft drink. There will also be a separate 6 metre refrigerated dairy case for the display of chilled wines, coolers and beer.

An area is to be set aside for the interim storage of stock before placement in the sales area. Stock delivery will be through a roller shutter from the loading dock area of the supermarket.

The centre area of the store will be carpeted. Immediately in front of the cool room and refrigerated case, the floor will be covered with sheet vinyl."

16. Mr Abel elaborated at page 441–442 of the transcript when he said:

"I did an analysis on the amount of beer that we could hold in the cool room, and that analysis told me that, based on my evidence of ten pallets in the cool room, there would be at least one and a half week's stock, and also, with the remainder of the store, – the amount of fixtures and also based on other stores we've got, which are smaller and in fact take more money, I wouldn't see any problem at all in any day holding a day's stock, or sufficient stock for the public in any way shape or form."

17. In this context, it is convenient to refer to the evidence of Mr Abel at the same page of the transcript when counsel for Coles asked him:

"Some observation was made about the shape of the proposed Liquorland store and its effectiveness from a retailing standpoint. What observation can you make about that?"

Answer: The only observation I could make about that is, there's no basis for that statement. Sure, it's on an angle, but that's the current thinking of New World Supermarkets with any new – any Liquorland stores going into the supermarkets – that they are done on that basis, with that splayed side to display other merchandise on or so on – where, in the past, we've had basically a square store. Operationally, I don't see any problem at all. You don't have to display the merchandise on the floor, straight up and down. You can angle the floor stacks, which opens up the merchandise for the customers, and I don't see any problem operationally at all. I think the other thing too, if I may add, from the supermarket point of view, instead of having a square premises, this, with the angle – in this case it will be a fruit and veg cabinet on the side, it looks aesthetically probably a little bit better from the supermarket operator's point of view.

Mr Matheson also made some observations about the amount of storage space. Can you explain to the Court what requirements Liquorland has for the storage of liquor – that is, other than in the shop itself – and how you keep up with your supply of stock?

Answer: We use the maximum amount of deliveries available to us from both Swan Brewery and Carlton United, and also the main wide range wholesaler in Perth, which is Australian Liquor Marketers, which we deal with. We'd use the maximum amount of deliveries from those suppliers and the other remaining suppliers are only the small wineries and so on which you wouldn't need any more than probably once a week anyway."

18. In cross examination, Mr Abel largely conceded at page 460 of the transcript that Liquorland operates no other triangular shaped liquor store in Australia. Counsel for Christoff referred frequently to this feature which on all the evidence, it seems to me, has very little significance in the present case. Of more significance were the answers of Mr Abel to the following questions at page 461–462 of the transcript when counsel asked:

"You make some reference in paragraph 2.6 to "numbers of stores Liquorland has in this State, and numbers that are free standing". Of the ones that are located within supermarkets and/or variety stores, how many do have external access?"

Answer: They all do.

In other words, this will be the first of your Liquorland stores which will be totally surrounded and incapable of trading after hours?"

Answer: Yes, that's correct."

19. Counsel took the matter up a little later again at page 467 of the transcript when he put the following proposition to Mr Abel:

"The other significant difference is of course that Budget Liquor can trade after hours to cater to whatever demand is there after your store will close, can't it?"

Answer: Yes, it can but I don't believe there will be a demand there after hours.

I am not asking about your beliefs, Mr Abel, that is the other significant difference, is it not – the capacity to trade after hours?

Answer: It's the only difference but I don't believe it will be needed."

20. It is plain from the evidence as a whole that the proposed Liquorland store offers no external access. It is also plain that in the context of the present applications the question of proposed access and the question of proposed trading hours are inter-related. I conclude from the evidence of Mr Abel firstly that no other location within the premises leased by Coles is available to Liquorland and, secondly, that Liquorland has not sought and there is presently not available for lease any other location at the Mirrabooka Square Shopping Centre for use as a liquor store other than Shops 24 and 25. I therefore infer in these circumstances that the trading hours which Coles proposes have not been determined independently of the constraints placed upon Coles by its premises. I shall return to the question of proposed trading hours in respect of both premises, their range of stock and proposed pricing policies shortly.

21. It is not in dispute between these competing applicants that the restaurant court situated in the middle of the Mirrabooka Square Shopping Centre is open after hours with separate access provided through "after hours entry number two" on GIA8. It is also not in dispute that the restaurant court is sealed off from the rest of the Centre after hours. There was little evidence of the requirements of the public patronizing this facility after hours for packaged liquor. This may in part be because, as was urged for Coles, there is no convenient path from after hours entry number two to the premises proposed by Christoff. It seems far more likely than not that those people patronizing the restaurant court, and travelling by motor vehicle, would park in the southern car park.

22. The following exhibits also disclose limited evidence of the public patronizing facilities adjoining the Mirrabooka Square Shopping Centre after hours. Exhibit 99 is to the effect that Videolink operates until 10.00 pm from Sunday to Thursday and to 11.30 pm on Friday and Saturdays. It is numbered one on GIA8. Exhibit 100 shows that Ice World operates six days a week until 10.00 pm with 52% patronage occurring after 5.30 pm. That facility is numbered fourteen on GIA8. Exhibit 101 establishes that Squash World Mirrabooka is open until 10.00 pm Monday to Friday and to 6.30 pm on Saturday and Sunday. 75% of its patronage occurs after 5.30 on weekdays. It is numbered fifteen on GIA8. Exhibit 102 shows that the Herb Graham Regional Recreation Centre trades seven days a week from 9.00 am to 11.30 pm. Mr David Tippett states at paragraph 5 et seq:

"Many different clubs and individuals attend the Centre on various occasions at various times, to play organized sport, or to partake in other recreational and leisure activity.

At various times throughout each week throughout the year activities which are conducted at the Centre include: netball, volley ball, badminton, soccer, basketball, tai kwan do, karate, drama, martial arts, softball, bingo, bridge, aerobics, cricket, modelling, dressmaking, snooker and a weight watchers group.

The Centre employs 4 full time staff who work Monday to Friday from 9.00 am until 5.00 pm and a further 13 casual staff who generally work between about 5.00 pm and 11.30 pm on Monday to Sunday inclusive and on various occasions during the day when needed.

... the boardroom of the Centre is able to hold about 25 people comfortably, and since the Centre hires the boardroom out on an hourly basis, it is not always possible to record the exact number of people using the boardroom.

On the basis of the till counts at the Centre, I am able to say that during the survey week of the 12th August 1990 until 18th August 1990 a total of 6,558 people used the Centre excluding the boardroom.

I chose that week at random. The numbers that week should be fairly typical of the patronage at the Centre over the course of the year.

Of that 6,558 people I estimate that approximately 1,947 people used the Centre between the hours of 5.30 pm and 9.00 pm during the survey week.

I calculated that approximately 1,947 used the Centre between 5.30 pm and 9.00 pm during the survey week on the assumption that the numbers using the Centre between 5.30 pm and 11.30 pm were evenly distributed during the five hour time frame."

23. Exhibit 105 contains projections about anticipated patronage at a proposed Kentucky Fried Chicken outlet, being marked thirty-one on GIA8, and Exhibit 106 contains similar evidence about a proposed Hungry Jacks outlet adjacent thereto. The Kentucky Fried Chicken outlet will trade to 10.00 pm Monday to Thursday and Sundays and to 12.00 midnight on Fridays and Saturdays. It is expected that the facility will attract between 3,600 and 3,800 customers per week, with 50% patronage occurring after 5.30 pm. The proposed Hungry Jacks outlet will trade until 11.00 pm each day and it is anticipated that it will attract 6,000 per week, 60% of which patronage will occur after 5.30 pm.

24. Exhibit 107 demonstrates the current timetables of Transperth bus services operating out of the bus terminal which is numbered five on GIA4.

25. It is to be observed that the evidence to which I have just referred, while it demonstrates the presence of a number of members of the public in the general vicinity of the Mirrabooka Square Shopping Centre after hours, contains little material from which their requirements for packaged liquor can be considered including the question of the extent to which those requirements are currently satisfied either in or outside the affected area. The same caution is required in approaching evidence of this nature as is often required in approaching similar evidence about the number of persons patronizing one particular supermarket or another.

26. There remains no doubt in my mind that each of these applications has been principally presented and supported by evidence seeking to establish that the grant of one or other of these applications is necessary to provide for the reasonable requirements of the public residing in, resorting to or passing through the affected area and in particular those persons patronizing the Mirrabooka Square Shopping Centre during the day. In my opinion, it is upon that primary evidence that these applications fall to be determined.

27. I now turn to consider the proposed trading hours and stock of each applicant. Christoff proposes to trade between 8.30 am and 9.00 pm six days a week in accordance with the Act. By paragraph 4(c) of its notice of application (Exhibit 6), Coles states the obligatory trading period for which approval is sought as 9.00 am to 5.00 pm. At paragraph 7.6 of Exhibit 63, Mr Abel explains the proposed trading hours permitted by the Act as follows:

"(a) 8.30 am to 5.30 pm from Monday to Wednesday and Friday;

- (b) 8.30 am to 9.00 pm on Thursday;
- (c) 8.00 am to 5.00 pm on Saturday;
- (d) such other times as the stores within the Mirrabooka Centre trade."

28. At paragraph 94 et seq of Exhibit 24, Mr McCollum addresses the opening stock which Christoff proposes:

"The opening stock at Budget Liquor will be \$170,000 worth of products made up of the products identified in the stock list attached hereto marked E.

I propose that the break up in value of the opening liquor stock to be approximately \$50,000 worth of beer, \$60,000 of wines (which includes champagnes), \$50,000 worth of spirits and \$10,000 worth of soft drinks, cigarettes and other sundry items (gifts, books, speciality lines)."

29. Mr McCollum summarizes Christoff's proposed pricing policy at paragraph 105 of Exhibit 24 in the following way:

"Our basic policy will be to sell packaged liquor at prices that I think are fair and attractive to the consumer.

We intend using as a starting guide for the prices at Budget Liquor the industry recommended prices but where we regard them as high, we will sell the product below those prices.

The mark up on the products depends upon the costs into store of the particular product.

As mentioned previously we intend to provide substantial discounts from the recommended retail prices on many lines of wines, spirits and beer in the form of weekly specials, so that a market may be quickly established at Budget Liquor.

We also intend to monitor closely the sales of the products so that we are in a position to stock Budget Liquor in accordance with changing customer demand. I intend to organize Budget Liquor so there is a fast turnover of stock.

I intend to ensure the prices for packaged liquor at Budget Liquor will be more attractive than any other liquor outlets in the affected area."

30. Mr McCollum addresses the proposed pricing policy in some more detail in paragraph 88 et seq of Exhibit 24. At paragraph 103, he states:

"Christoff intends that Budget Liquor will compliment the liquor facilities offered by the tavern because:

- (a) *of the pricing policy. We will lower prices generally compared to those experienced in Mirrabooka in the past and will have many specials as we will operate with much lower overheads than the tavern;*
- (b) *between the two operations we will be able to buy better deals the benefit of which will be passed on to the customers;*

- (c) *we will offer much more variety to the public at the store than the tavern can stock;*
- (d) *we will provide friendly personalized service for the customers;*
- (e) *better display and promotion of the products generally; and*
- (f) *a wider range of ancillary services."*

31. I view the evidence on behalf of Christoff about the application of its proposed pricing policy at the Mirrabooka Square Shopping Centre with some scepticism in view of the fact that its associated company is the licensee of the Mirrabooka Tavern. I say this notwithstanding that I acknowledge the evidence of Mr McCollum in paragraph 80 of Exhibit 24 that the proposed premises target a different market from that of the tavern bottle shop.

32. Mr Abel gives evidence of the proposed stock at Liquorland at paragraph 8 of Exhibit 63 when he says:

"Liquorland Mirrabooka will initially stock over 1,300 lines of liquor together with the usual range of cigarette, mixers and soft drinks.

I have chosen the range of stock and list of products to be carried by Liquorland Mirrabooka and drew upon my extensive experience in the liquor industry. The range was selected having regard to, among other things, those people who resort to the Mirrabooka Square Shopping Centre, and the population in the surrounding area, and so those people who we expect to use Liquorland Mirrabooka. I have had discussions with the managers of the Coles Supermarket/K-Mart store at the Mirrabooka Square Shopping Centre and from these discussions, my enquiries, and from my experience with other Liquorland stores the range of stock was selected to satisfy the anticipated requirements of these persons.

Annexed to my proof marked "MCA1" is a summary of the types of lines and their origins together with a complete list of the individual products to be stocked.

Of course the range of products and lines carried will vary to reflect any changes in the public's demand. The stock will be altered to include any product specifically requested and delete any products for which there is no demand."

33. Mr Abel addresses Coles' pricing policy at paragraph 9.7 to 9.9 of his proof of evidence and at paragraph 11.2 makes a comparison which leads him to conclude that on average Liquorland prices are 10.63% cheaper than those at the tavern. This conclusion is not surprising in the circumstances. Mr Abel also makes another comparison which is more useful in the present circumstances between the range of stock which Christoff proposes and that which Coles proposes. That comparison is contained in Exhibit 70 and I accept the fact that Coles proposes an opening stock considerably larger than that of Christoff.

34. On behalf of Christoff, a public accountant, Mr Geoffrey Watt, was instructed to prepare a break even analysis to examine the feasibility of this proposal. It is annexed to his proof of evidence (Exhibit 27) and marked A and B. It will be observed that annexure A states "G.P. to sales equal 26%". In view of the reliance which counsel for Coles placed upon this evidence during the course of the hearing, it is necessary for me to observe that I do not consider that the evidence to which I have referred should be relied upon as evidence of the gross profit margin which Christoff will operate at and, therefore, evidence from which it may be inferred that the price of liquor which Coles will sell at Liquorland must be cheaper

because the evidence of Mr Abel was at page 449-450 of the transcript that Coles will operate on a gross profit of 23%. The proposition advanced on behalf of Coles and reflected in the written submissions is founded upon assumptions which have not been and cannot be proved and I do not consider that the evidence of Mr Abel in this regard provides the foundation for the assertions advanced in reliance upon it. I find nothing on the evidence as a whole which leads to the conclusion that the pricing policy of either applicant would be likely in the event to result in the sale of liquor to the public at cheaper prices by one or the other.

35. Each applicant is required to satisfy the Court that the grant of its application is necessary in order to provide for the reasonable requirements of the public for liquor and related services in the affected area. I have had regard to the evidence of Mr Thompson (Exhibit 29) and Mr Goff (Exhibit 91) in relation to the number and condition of the licensed premises already existing in the affected area and the manner in which, and the extent to which, those premises are distributed throughout the area. I accept the submission made by Mr Mossenson in his brief summary of final submissions at paragraph 1.3.3 that the evidence establishes that the distribution of those licences is unsatisfactory from any public perspective. He submitted that save for the Mirrabooka Tavern there is no other licence located to serve the very centre and middle of the affected area until one moves into the last thirty percentile of the radius. This means that for much of this affected area there is a very large gap of licences which are capable of providing specialist packaged liquor services. I accept this submission and in my view it may be applied in the case of each application.

36. The evidence of Mr Goff at paragraph 7 shows that the population of the affected area in 1986 was 37,639. At paragraph 7.3 he estimates the June 1990 population at approximately 47,600 and at paragraph 7.4 he states:

"A measurement of urban land still to be housed indicates that there is a potential for 1725 new homes to be located on 175 hectares of undeveloped land. At a rate of 35 new dwellings per month it is anticipated that by the end of 1991 population will be approximately 49,500 and by the end of 1992 it will be 50,750. At current rates the affected area should be fully developed at June 1993 (population 51,300)."

37. I also accept the evidence of Mr Thompson in Exhibit 29 at paragraph 6.01, 6.04, 6.14 and 6.16 that the five kilometre radius "catchment" is conservative "in that the size and modernity of the Mirrabooka Shopping facility would indicate a larger than normal district centre catchment."

38. The evidence of Mr Armstrong (Exhibit 33) at paragraphs 38 to 51 confirms this conclusion and expands upon it. This evidence leads me to accept that the Mirrabooka Square Shopping Centre attracts considerable patronage from persons who resort to the affected area for the purpose of visiting the Centre.

39. I heard the subjective evidence of a number of members of the public who currently patronize the Mirrabooka Square Shopping Centre or the adjoining facilities. No secret was made about the respective allegiances of these witnesses. It is fair to say that some are currently customers of the Mirrabooka Tavern, some are business proprietors or employed at the Mirrabooka Square Shopping Centre, some were current customers of Coles Supermarket and K-Mart, some were current customers of other Liquorland stores. The primary and essential thrust of all their evidence, whatever their allegiances, was that individually they would patronize liquor store premises at the Mirrabooka Square Shopping Centre while patronizing the Centre during normal business hours for other purposes. There certainly was some evidence that one witness and another would not choose to walk from one end of the shopping centre to the other for their liquor requirements. At the end of the day, however, in the determination of these applications I found that evidence to be largely equivocal. I

observed at the time of inspecting the Mirrabooka Square Shopping Centre that its facilities and car parks are all within a comfortable walking distance. If it is possible to perceive any cohesive thrust in the subjective evidence, that probably lies in a desire on the part of many witnesses to be able to purchase a limited range of packaged liquor at discount prices.

40. It was submitted on behalf of Coles at paragraph 16.8 of the written submissions that:

"Each of the witnesses called by Coles expressed the strong and over-riding desire for Liquorland Mirrabooka by reason of the prices it will charge. Many of the users of the Centre are clearly from a lower socio-economic group and the key characteristic of a liquor store these users wanted, was competitive pricing."

41. It is a fact that several witnesses gave evidence accordingly by reason of their satisfaction with the prices charged at other Liquorland stores which they spoke about. I did not understand this evidence to be by way of comparison with the services to be offered by Christoff, about which many witnesses knew nothing, but rather an expression of satisfaction with the services which in other locations they received at Liquorland. I have found that there is nothing in the evidence in this case which should lead the Court to conclude that the prices to be offered by Coles at the Liquorland premises are likely to be cheaper than those which Christoff is to offer.

42. Lest it should be said that the evidence of so called one stop shopping in this case should lead to the grant of one application or the other, I am of the opinion that there is no more merit objectively in the location of the proposed Liquorland premises in conjunction with the Coles Supermarket than there is in the location of the Christoff premises adjacent to the Woolworths Supermarket and fresh food supplies.

43. I accept the evidence of Mr Abel at paragraph 11.5 of his proof of evidence (Exhibit 63) when he says:

"The Mirrabooka Tavern does not adequately cater for patrons using the Mirrabooka Square Shopping Centre during normal shopping hours. It is not situated within the Centre, being about half a kilometre away. It has only a small browse area. Its range and prices are not comparable to Liquorland."

44. At paragraph 5.11, Mr Abel expresses the opinion that:

"The opening of Liquorland Mirrabooka will "compliment" the Centre and the surrounding area and accord with Coles' policy of promoting one stop shopping. Liquorland Mirrabooka will result in the Centre having a liquor outlet and thereby being a truly one stop shopping facility.

Liquorland Mirrabooka will not operate "after hours" (that is after the major traders within the Mirrabooka Square Shopping Centre have ceased trading). Liquorland Mirrabooka will provide a liquor outlet for patrons using the Centre and its stores, in the main to fulfil their domestic shopping requirements; these shoppers use the Centre during normal trading hours. Hence, Liquorland Mirrabooka is within the "heart" of the Centre of the centre mall and "external" access (that is access directly to the outside of the Centre) is not needed."

45. In my opinion, whatever may be the policy of Coles in promoting one stop shopping, I am firmly of the opinion from the evidence in this case that Mr Abel expresses the conclusions which I have just referred to because Coles is constrained by the physical limitations of its premises and not because it has formulated any independent view about the

requirements of its customers for external access or otherwise for after hours trading. I refer to the opinion which I expressed earlier in this regard.

46. I am satisfied on the evidence that each applicant has complied with the requirements of s.37 and s.40. In view of the fact that these applications are for conditional grants, I do not require compliance with s.39.

47. It will be quite apparent from my examination of the merits of these two competing applications that there is in my opinion relatively little to choose between them. I have reached the conclusion, however, that to grant both applications would not be to promote the objects of the Act in the circumstances. It is therefore necessary to distinguish between them. Objectively, in the light of the conclusions which I have expressed, the only distinction which in my opinion may be made on the evidence between the two applications in the public interest is that the Christoff premises offer both internal and external access to members of the public expected to patronize the premises either during business hours or after hours. Such alternative access is in my opinion to the advantage of the public over the more confined approaches of the Liquorland proposal.

48. I am therefore of the opinion that the evidence in these two applications is sufficient to satisfy the Court that the grant of the application by Christoff is necessary to provide for the reasonable requirements of the public for packaged liquor and related services in the affected area and that on the merits it is in the public interest that this application should be granted.

49. In the circumstances of this case, it is only necessary for me to say that there is nothing in the notice of objection to the application by Christoff which would lead me to refuse that application.

50. Since I am of the opinion, that only one application should be granted, it must follow that the application by Coles for an original grant should be refused and likewise its application for removal should be refused.

51. Accordingly, for these reasons, I am of the opinion that the application by Christoff should be granted and that the two applications by Coles should be refused. The grant is subject to the condition that the applicant comply with the lawful requirements of the Director of Liquor Licensing in the completion of the premises.



JUDGE

