

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: LIQUORLAND (AUSTRALIA) PTY LTD

PREMISES: LIQUORLAND VASSE

PREMISES ADDRESS: 18 NAPOLEON PROMENADE, VASSE

APPLICATION ID: A000222759

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 10 MARCH 2017

Introduction

- 1 Liquorland (Australia) Pty Ltd (the applicant) seeks the conditional grant of a liquor store licence for premises to be known as Liquorland Vasse and located at 18 Napoleon Promenade, Vasse. 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 Pursuant to ss 13 and 16 of the Act, the application will be determined on the written material lodged by the applicant.

Brief summary of the applicant's evidence and submissions

- 4 The applicant seeks to establish a convenience style liquor store in the new Vasse Village Shopping Centre (the Centre). Vasse is located within the City of Busselton and, according to the applicant, it is currently undergoing three main residential developments: Dawson Estate, Armstrong Estate and Birchdale Estate. When completed, these developments will bring up to 5,000 new residents into the locality.
- 5 The Centre will be a neighbourhood activity centre design to provide for the daily and weekly consumer requirements of the Vasse Community, including the new residential developments and residents of the surrounding suburbs. It will also be conveniently located for persons travelling to the South West on Bussell Highway or the Busselton by-pass.
- 6 It was submitted by the applicant that despite the proposed development in the area, the locality is lacking in retail services. There is presently only one packaged liquor store, located to the north of the locality and there is no full-service shopping centre. The proposed liquor store, as part of the Centre, will provide an important service that is lacking for residents of Vasse and nearby suburbs.

- 7 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA included:
- a report from MGA Town Planners which considered key features of the locality including traffic flows and likely catchment area, retail structures and purchasing patterns, demographics of the locality; and groups potentially 'at-risk' of alcohol-related harm or ill-health in the local community;
 - a report from Bodhi Alliance, who were engaged as an expert to undertake an amenity and social audit of the locality; and
 - the results of a survey of residents in the locality undertaken by Data Analysis Australia Pty Ltd.
- 8 The applicant contended that the proposed liquor store will:
- cater for the packaged liquor requirements of current and future residents of the locality;
 - provide the ability to combine liquor purchases with grocery shopping that is currently lacking in the locality, which will meet the contemporary expectations of the Vasse community;
 - greatly contribute to the amenity of the area;
 - enable residents to shop locally, preventing economic leakage;
 - provide employment opportunities for local residents; and
 - offer a large range of products from WA, particularly from the Margaret River region.

Determination

- 9 Although the application is uncontested, there is no presumption in favour of the grant of the application. Section 38(2) of the Act places a burden on an applicant for the grant of a liquor store licence to satisfy the licensing authority that the grant of the application is in the public interest. An applicant must therefore adduce sufficient evidence to discharge this burden.
- 10 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).
- 11 The factual matters which I am bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary

and secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).

12 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.

13 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.

14 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.

15 The proposed liquor store is to be located in a new shopping centre development in Vasse. I note the following key aspects of the application:

- there are three large residential developments being constructed in the locality, which is expected to result in a large increase in population;
- the Centre will be a new shopping precinct designed to cater for the daily and weekly retail requirements of the Vasse Community and the surrounding suburbs;
- the locality has low outlet density, with only one other packaged liquor outlet and no one-stop shopping facilities. As such, the proposed liquor store will not be duplicating existing services in the area;
- there is good support from the local community for the grant of the application;
- the locality is socio-economically advantaged and does not have a large concentration of 'at-risk' groups for alcohol-related harm;
- the proposed liquor store is unlikely to have a negative impact on the amenity of the local community; and

- the proposed liquor store is modest in size and is designed as a convenience outlet for consumers using the Centre.
- 16 I have considered the applicant's evidence, including the expert reports, and I find that the proposed liquor store will cater to the packaged liquor requirements of the existing and future population of the area. 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).
- 17 In respect of the harm minimisation object of the Act, 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.
- 18 In weighing and balancing the evidence presented by the applicant, I am satisfied the applicant has discharged its onus under s 38(2) and the grant of the application is in the public interest.
- 19 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 21 December 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 9 March 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. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.

Trading

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

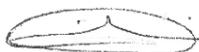
CCTV

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

Tasting condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
 - (b) Tastings cannot be supplied to juveniles.
 - (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
 - (d) Compliance with the Food Act 2008 at all times.
 - (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
 - (ii) Beer – 100 mls
 - (iii) Spirits – 15 mls.
 - (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.
- 20 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 21 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 22 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