

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** LIQUORLAND (AUSTRALIA) PTY LTD

**PREMISES:** VINTAGE CELLARS SUBIACO

**PREMISES ADDRESS:** CORNER HOOD STREET AND STATION STREET,  
SUBIACO

**APPLICATION ID:** A000238721

**MATTER:** APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR  
STORE LICENCE

**DECISION OF:** PETER MINCHIN  
DIRECTOR LIQUOR CONTROL AND ARBITRATION

**DATE OF DETERMINATION:** 07 SEPTEMBER 2017

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### **Background**

- 1 Liquorland (Australia) Pty Ltd (the applicant) is applying for the conditional grant of a liquor store licence for premises to be known as Vintage Cellars Subiaco and located at the corner of Hood Street and Station Street, Subiaco. 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 (the Director). There were no objections or interventions to the grant of the application.
- 3 As permitted under ss 13 and 16 of the Act, the application will be determined on the written submissions and evidence of the applicant. Further, this decision has been prepared, and should be read, in the context of a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.<sup>1</sup>
- 4 The applicant submitted a detailed Public Interest Assessment (PIA) in accordance with the requirements of the Director's policy. The PIA provided information on the nature and character of the locality surrounding the proposed liquor store, the services and facilities to be offered at the store, the benefits to the community and the public, likely impact on the amenity of the area and the existing rate of harm or ill-health in the area.
- 5 The applicant also provided the following expert reports:
  - a report from MGA Town Planners which considered the key features of the locality, including retail structures and purchasing patterns, traffic flows and key catchment areas, demographic profile of the locality and groups potentially at-risk of alcohol-related harm;

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<sup>1</sup> Refer s 16(7) of the Act

- a report from Bodhi Alliance, who undertook an amenity and social audit of the locality; and
- the results of a survey of residents undertaken by Data Analysis Australia Pty Ltd (DAA).

### Determination

- 6 The proposed liquor store will be situated on the old Station Street Market site, which is undergoing a \$96 million redevelopment into a high order shopping centre within the Subiaco Secondary Activity Centre area. The new Centre will include four storeys of retail and office space.
- 7 The evidence indicates that the locality surrounding the proposed liquor store is socio-economically advantaged (being in the top 10% of postcodes nationally) and does not have a large concentration of groups that could be considered at-risk from alcohol-related harm.
- 8 There is good support from the community for the grant of the application as evidenced by the results of the DAA survey.
- 9 There is no presumption in favour of the grant of an application, rather the opposite applies where the applicant must, in accordance with s 38(2) of the Act, satisfy the licensing authority that the grant of the application is in the public interest.
- 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.<sup>2</sup>
- 11 The factual matters which I am bound to consider when determining this application are those relevant to the primary and secondary objects of the Act as set out in s 5.<sup>3</sup>
- 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:
  - development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;

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<sup>2</sup> *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.

<sup>3</sup> *Woolworths v Director of Liquor Licensing* [2013] WASCA 227.

- 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 to facilitate the use and development of licensed facilities, including their use and.
- 14 To cater to the more sophisticated clientele that will be visiting the new Station Street Shopping Centre, the applicant intends to operate the premises as a Vintage Cellars store, providing a pre-dominantly wine-based service.
- 15 Based upon the evidence submitted by the applicant I find that the grant of the application would promote objects 5(1)(c) and 5(2)(a) of the Act. There is no evidence that the locality is suffering from above average rates of alcohol-related harm or that the operation of the proposed liquor store would unacceptably contribute to an increase in this harm. I therefore find that the grant of the application will not conflict with the harm minimisation object of the Act.
- 16 I am satisfied that the applicant has discharged its burden under s 38(2) of the Act and the grant of the application is in the public interest. Accordingly, 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 9 June 2017
  - (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 **06 September 2018** pursuant to s 62(4)(c) of the Act.

### **Conditions to be imposed on the issue of the licence**

#### Trading hours

The permitted trading hours are those prescribed in s 98D of the Act.

#### Trading

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

CCTV

The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing. Images recorded via the video surveillance system must be retained for 28 days (or such period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the police or other persons authorised by the Director;

Approval under s 104

Pursuant to s 104 of the Act, the profit sharing arrangements in accordance with the application dated 8 June 2017 is approved.

Tasting condition

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

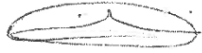
- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the Food Act 2008 at all times.
- (e) Tastings per sample must not exceed the following measures:
  - (i) Wine – 50 mls
  - (ii) Beer – 100 mls
  - (iii) Spirits – 15 mls.
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

Compliance with harm minimisation policy

The licensee is to have a House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

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

19 This matter has been determined by me under delegation pursuant to s 15 of the Act.

A handwritten signature in black ink, appearing to read 'Peter Minchin', enclosed within a simple, hand-drawn oval border.

Peter Minchin  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING