

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: LIQUORLAND (QLD) PTY LTD

PREMISES: FIRST CHOICE LIQUOR SUPERSTORE RIVERTON

PREMISES ADDRESS: 353-361 HIGH ROAD PARKWOOD

APPLICATION ID: A000057279

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

DATE OF DETERMINATION: 22 JUNE 2015

Introduction

- 1 On 8 December 2014, an application was lodged by Liquorland (QLD) Pty Ltd for the grant of a liquor store licence for premises to be known as First CHOICE Liquor Superstore Riverton and located at 361 High Road, Riverton. The application is made pursuant to s 47 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. Objections to the grant of the application, pursuant to ss 73 and 74 of the Act, were lodged by Donna Marie Snell, Anna Lucas, Sharon and Sam Bell, Stuart Lawrence Eyles, Giuseppe Zagari, and Karl Griffin. The Commissioner of Police (the Commissioner), pursuant to s 69 of the Act, lodged a notice of intervention.
- 3 In accordance with ss 13 and 16 of the Act, the application will be determined on the papers. The submissions and evidence of the parties are briefly summarised as follows.

Submissions by the applicant

- 4 The applicant submits that while the existing First CHOICE Liquor Superstore and the High Road Hotel and Motel (the hotel), which operate under a hotel licence, are currently located on the site of the proposed liquor store, the Metropolitan Central Joint Development Assessment Panel has given approval for the redevelopment of the site, which will involve:
 - the demolition of the hotel;
 - construction of a new First CHOICE Liquor Superstore and a Coles Supermarket (partly) on the site previously occupied by the hotel; and
 - the demolition of the existing store upon construction of the proposed store and Coles Supermarket.

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- 5 Consequently, the applicant's immediate objective is to permit the existing packaged liquor outlet of the hotel (which operates under the First CHOICE Liquor banner) to continue to trade while a new proposed store is being constructed. The applicant is therefore seeking the grant of a liquor store licence for the area currently used for the sale of packaged liquor under the hotel licence, and if this application is successful, an application for the removal of the licence to the new purposely built store (approximately 40 metres away) will be necessary in due course.
- 6 It was therefore submitted that because a packaged liquor outlet already exists on the site (operating under the hotel licence) any adverse impact (if any) of granting this application would be limited.
- 7 The applicant lodged a Public Interest Assessment (PIA) which included a report prepared by MGA Town Planners (town planning report); the results of community surveys conducted by Data Analysis Australia Pty Ltd (DAA report); and a report from Bodhi Alliance (Bodhi report), who were engaged to undertake an audit of sensitive premises and to consult with stakeholders within the locality.
- 8 The MGA report considered the application from a town planning perspective and included information on the:
- key features of the development proposal and its accessibility to traffic flows, both vehicle and pedestrian;
 - locality in which the premises is to operate;
 - retail structure and purchasing patterns of people residing in, resorting to or passing through the locality;
 - traffic, including travel patterns of people working in, or resorting to, the locality;
 - demographics of the locality;
 - 'at-risk' groups in the local community; and
 - location and nature of existing licences within the locality, having regard to the public's contemporary expectations for the purchase of packaged liquor.
- 9 The MGA report concluded that the proposed liquor store will perform a role different to that of existing liquor stores in the locality, which predominantly provide a convenience-orientated service and a lesser range and depth of stock. The wider range and volume of stock at the proposed liquor store will provide greater choice and an opportunity for more substantial liquor purchases. Overall, the proposed liquor store will be well positioned, in light of competing outlets, and will facilitate reasonable access to a full-scale packaged liquor outlet for residents in light of the distribution of large format stores, while maintaining the existing healthy competitive environment.

- 10 The DAA report provided the results of a telephone survey of households in the locality, and an intercept survey of shoppers who use the existing packaged liquor facility of the hotel. Both surveys showed that respondents use a range of packaged liquor outlets in the area, however, the surveys also indicated that the existing packaged liquor facility of the hotel was the one most commonly used by a substantial margin, with 45% of purchasers in the telephone survey and 64% of purchasers in the intercept survey using it as their main outlet. Respondents who did not support the application were mainly concerned about the loss of an eating place and social venue for the area. The DAA report concluded, from the survey results, that most customers will continue to use the First CHOICE Liquor store after the redevelopment, and for a proportion, this use will be in conjunction with shopping at the Coles supermarket, giving the proposed liquor store a dual role as a convenience store and a destination store.
- 11 Bodhi Alliance conducted an audit of sensitive premises in the area and undertook consultation with stakeholders in the locality. According to the Bodhi report, all sensitive premises and other stakeholders interviewed were not opposed to the granting of a liquor licence to enable the repositioning of the first CHOICE store within the site. It was felt that the proposed store would be unlikely to impact the community, although some were sorry to see the loss of the High Road Hotel and thought that the replacement with a Coles supermarket was not a net benefit to the community.
- 12 According to the applicant, there is no evidence to suggest that the locality in which the proposed premises would operate experiences alcohol-related harm above what is normally accepted in the community or the grant of the application would pose a risk of increased alcohol-related harm in the community. Consequently, it was submitted by the applicant that this application is to licence, under a liquor store licence, the existing packaged liquor facility which operates as part of the High Road Hotel, and, in the absence of any probative evidence indicating that the sale of packaged liquor from the existing facility, as it currently trades and operates, is not catering to consumer requirements for packaged liquor or is causing undue harm to the community or public disorder, there is no basis for concluding that the grant of the application is not in the public interest.

Submissions by the objectors

- 13 The objectors object to the grant of the application for a similar reason, and therefore it is convenient to deal with the basis of their objection collectively.
- 14 The objectors are essentially opposed to the grant of the application because it will result in the closure of the High Road Hotel. According to the objectors, the High Road Hotel currently provides a venue for:
 - the local community to socialise;
 - families to celebrate together;

- the provision of meals;
 - sporting groups and other community organisations to conduct quiz nights, fund raising and other social events; and
 - local musicians to showcase their talents.
- 15 The objectors state that the local community was not consulted in the decision to redevelop the site or asked what they would like to see, use or need in the area. It was submitted that the hotel is an asset to the community and the closure of the hotel will see a reduction in the services provided to the local community. According to the objectors, the community does not need another liquor store or another grocery store and the developer's plans to demolish the High Road Hotel should be denied.

Submissions by the Commissioner of Police

- 16 The Commissioner intervened in the application for the purpose of having conditions imposed on the licence, should the application be approved.
- 17 According to the Commissioner, conditions relating to product tagging, product display and CCTV will help reduce theft from the premises, which is advisable given the prevalence of bottle shop thefts throughout the industry.

Determination

- 18 The applicant currently operates the High Road Hotel at 361 High Road, Riverton. As part of this hotel, there is a large packaged liquor facility, which operates under the First CHOICE Liquor Superstore banner. The High Road Hotel is to be demolished and a Coles supermarket is to be built on the site. The applicant, through this application, is seeking the grant of a liquor store licence, to effectively replicate the existing packaged liquor facility at the site (which trades under the hotel licence). The hotel licence for the High Road Hotel is to be surrendered because of the proposed redevelopment.
- 19 It was submitted by the applicant that the proposed liquor store will not only cater to the existing clients of the High Road Hotel, but also those persons who want to purchase their packaged liquor as part of their grocery shopping trip at the proposed Coles supermarket and those persons for whom vehicular access by the well-established regional and local road routes is convenient.
- 20 An applicant for the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(2) of the Act). 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).

- 21 The factual matters which the licensing authority is 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.
- 22 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.
- 23 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.
- 24 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.
- 25 The DAA report, which was part of the applicant’s PIA, provided the results of a telephone survey and an intercept survey. The survey results indicate that the current packaged liquor facility at the High Road Hotel is well utilised by respondents and most would continue to do so after the proposed redevelopment. There is reasonably strong support for the proposed redevelopment from respondents. The DAA report concluded that:
- “It is clear that most customers will continue to use the first CHOICE liquor store after the redevelopment, and for a proportion, this use will be in conjunction with shopping at the Coles supermarket, giving it a dual role as a convenience store and a destination store.”*
- 26 The survey results did, however, indicate some opposition to the proposed redevelopment, with the main reasons for not supporting the proposal related to the

loss of the hotel, with specific reference to the loss of an eating place and social venue for the area. This is the issue raised by the objectors.

27 The objectors argue that this application should not be approved because the closure of the hotel will result in a reduction in services and amenity provided to the local community.

28 Section 94 of the Act relates to the surrender of a licence. It provides that a person, who is the holder of a licence, may give notice to the Director of the intention to surrender the licence and that licence –

(a) shall be deemed to be surrendered; and

(b) shall cease to have effect,

on such date as is, in a notice of acceptance of the surrender, given by the Director.

29 The Director cannot accept a notice of surrender unless satisfied that all relevant consents, as stipulated in s 94(3), have been obtained. Once the relevant consents have been obtained, there is nothing precluding the Director from accepting the surrender of a licence.

30 A notice of intention to surrender a licence is not an application, for the purposes of the Act. This is an important distinction.

31 Sections 73 and 74 of the Act relate to objecting to applications. In my view, the objectors in this case are essentially opposed to the surrender of the hotel licence which currently operates at this site, because of the loss of services that the hotel provides to the community. However, as already stated, a notice of intention to surrender a licence is not an application *per se* and consequently, is not subject to a right of objection under s 73 or s 74 of the Act.

32 Whilst there is some notional relationship between the grant of this application and the surrender of the hotel licence at this site, they are nonetheless two separate matters for consideration under differing provisions of the Act. Therefore, I find the objections in this case are misconceived. The objectors have provided no evidence as to why the application for a liquor store licence should not be granted, but rather oppose the surrender of the hotel licence. As already explained, however, no such right exists.

33 I therefore find that the objections are without merit.

34 Having considered the applicant's evidence as a whole, and in particular the DAA report, the MGA report and the Bodhi report, I am satisfied that the applicant has discharged its onus under s 38(2) of the Act and the grant of the application is in the public interest. The grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act. There is no evidence before me to indicate that the grant of the application would cause undue harm or ill-health to the local community, a mandatory consideration under object 5(1)(b) of the Act. It is also relevant to bear in mind that the

applicant already operates a packaged liquor facility at this site, albeit under a hotel licence.

- 35 The Commissioner intervened in the application for the purposes of having conditions imposed on the licence. As an intervener, the Commissioner carries no onus to establish his assertions of fact or opinion (refer *Re Gull Liquor* (1992) 20 SR (WA) 321). In response to the conditions proposed by the Commissioner, the applicant submitted that there is no evidence that the management of the existing package liquor facility is causing public disorder and consequently there is no need to impose unnecessary conditions on the licence, above and beyond the applicant's own harm minimisation policies and practices.
- 36 Having considered the relevant submissions, a condition will be imposed on the licence relating to the maintenance of a CCTV system at the venue.
- 37 I am therefore satisfied that the applicant has complied with all the necessary statutory requirements and conditions precedent and the application is granted subject to the following:

Trading hours

The permitted trading hours in accordance with s 98D of the Act will be as follows:-

- Monday to Saturday: 8 a.m. until 10 p.m.;
- Sunday: 10 a.m. until 10 p.m. (in the metropolitan area only); and
- ANZAC Day: 12 noon until 10 p.m.

No trading will be permitted on Good Friday or Christmas Day.

Trading conditions

The applicant is permitted to sell and supply liquor in accordance with the provisions of s 47 of the Act as it relates to liquor store licences.

General Conditions

The licensee is to have and maintain a CCTV system in accordance the policy 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:-

1. Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.

2. Tastings cannot be supplied to juveniles.
3. 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.
4. Compliance with the *Food Act 2008* at all times.
5. Tastings per sample must not exceed the following measures:-
 - Wine – 50 mls
 - Beer – 100 mls
 - Spirits – 15 mls.
6. Free drinking water must be made available at all times that samples of liquor are available for tasting.

General

Pursuant to s 127(2) of the Act, the prescribed licence fee of \$423 will be payable prior to the operation of the licence.

I am satisfied that the licence fee has been paid.

The licensed premises are defined as the area outlined in red on the plans attached and dated 8 December 2014. A copy of that plan is to be retained on the premises and produced to any authorised officer if required.

Pursuant to s 116(3) of the Act, the premises' trading name of "First CHOICE Liquor Superstore Riverton" is approved. The licensee shall not subsequently conduct business at the licensed premises under any other trading name, without the prior approval of the Director of Liquor Licensing.

The applicant must ensure that the signage required under s 116(5) of the Act is displayed on the licensed premises within 14 days of the date of this decision (i.e. on or before 3 July 2015).

Additionally, pursuant to s 116(4) of the Act, the licensee must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.

- 38 I am satisfied that the applicant has obtained the necessary consents required under s 94(3) of the Act to surrender the hotel licence (601 000 2238) relating to the High Road Hotel. The grant of this licence and the surrender of the hotel licence shall be effective from 26 July 2015.
- 39 This matter has been determined by me under delegation pursuant to s 15 of the Act.

- 40 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING