

Decision Notification

Application Details

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| Application no. | 205562 |
| Licence No. | 57709794 |
| Licence Class | Packaged Liquor & Sales |
| Premises Name | MINI MART POORAKA |
| Premises Address | Unit 4 16-28 Research Road Pooraka SA 5095 |
| Applicant | J BALKAN TRADE PTY LTD |
| Application Type | Application for a Liquor Licence |

Outcome

| | |
|----------------|-------------|
| Decision | Granted |
| Effective Date | 02 Jun 2021 |

Requirements

The following requirements in support of the application have been satisfied:

- Landlord's consent has been obtained
- The application has been advertised
- All approvals, consents or exemptions have been obtained

People

Position of Authority

The following persons are approved to occupy any position of authority in the entity holding the licence and to receive proceeds of the business conducted under the licence:

- Zeljka Jaksic (165047)
- Aleksandar Jaksic (165048)

Community Impact Assessment

The application is a designated application for the purposes of section 53A of the Act.

This application may only be granted if the licensing authority is satisfied that the grant of the application is in the community interest. In determining this application under section 53A(2) of the *Liquor Licensing Act 1997* (the Act), I must have regard to:

- the harm that might be caused (whether to a community as a whole or a group within community) due to the excessive or inappropriate consumption of liquor;
- the cultural, recreational, employment or tourism impacts; and
- the social impact in, and the impact of the amenity of, the locality of the premises or proposed premises; and
- the nature of the business conducted or to be conducted under the licence (as prescribed)

I must also apply the community impact assessment guidelines which states, "*The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest and to provide relevant evidence and submissions to discharge this onus.*"

As part of the application the applicant has submitted a completed Community Impact Assessment Form as their community impact submission. It is the content of this form, the application material itself and a submission from the Australian Hotels Association opposing the grant, that my decision will be based on.

Nature of the business

This application relates to an existing grocery store at Pooraka which has been operating for approximately 12 months. The store is located in an arcade of mixed stores with a large parking area. The applicant has sought a packaged liquor sales licence on the basis of many requests from customers for alcohol products.

The range of liquor to be sold at the premises will be sourced from the Balkan regions including Serbia, Croatia, Bosnia, Montenegro and Macedonia. This is consistent with the range of grocery products from the same regions.

There will be no food, entertainment or accommodation provided at the premises.

The applicant has indicated that there is a significant amount of community support, particularly from its customers.

Potential harm

The applicant has not identified any "at-risk" or vulnerable groups and is of the view that the grant of a licence would be low risk given that the store is in an industrial area and surrounded by the types of businesses which do not typically attract children.

The store is fitted with an alarm, security cameras and roller shutters. In addition to this liquor will not be displayed in the store nor accessible to customers, rather it will be kept in a storage area. The applicant has explained that customers will be invited to select the liquor products from a catalogue or brochure in store, and then a staff member will collect the products from a secure area and provide them to the customer to purchase.

The applicant has not identified at risk groups in the community, however states that liquor will not be on display and would not be advertised, sold or given to potential "at risk groups".

Cultural, recreational, employment or tourism impacts

The applicant states that the grant of the licence will bring economic benefits to the area through the sale of liquor on the premises and contributing to importation of unique brands and liquor supplies not found in other stores. It has also been suggested that the grant of the licence would support employment opportunities, local and overseas, as well as potentially drawing more customers to the area (for the liquor products) who may all then support other nearby businesses.

The business seeks to provide a specific and targeted liquor range from countries in the Balkan region. This will add a further cultural element to the community and contribute to the diversity within Australian culture, as well as cater to the needs of those from that particular community.

Social impact and impact on the amenity of the community

The proposed premises is located at Research Road Pooraka. I note that there are 20 licensed premises located within a 2 kilometre radius of the mini mart including 3 packaged liquor sales licences and 1 general and hotel, I note that no description of these premises was provided.

The applicant provided location reports in support of its application, but did not specifically refer to other packaged liquor outlets or other facilities in the "locality". The focus of the application appears to be on the availability of liquor from a particular region of Europe for its existing customers. Arguably the applicant's intention is to attract

customers from a particular cultural group, or customers with an interest in liquor products from a particular region of Europe, rather than customers from within the locality.

Submission from the Australian Hotels Association (AHA)

The submission can be summarised as follows

- the application should be refused as it contravenes sections 38(7) and 38(8) of the *Liquor Licensing Act 1997*, and contravenes regulation 7AB(b).
- the grant of the application is not in the community interest.
- the store operates as a supermarket or convenience store, specialising in goods from a particular region of Europe
- a packaged liquor sales licence may only be granted in respect of premises of a prescribed kind if the authority is satisfied that there is a proper reason to do so. No proper reason has been given by the applicant as to why an exemption should be granted.
- the sale of liquor and supermarkets should not mix
- the authority cannot grant an exemption that is not sought by the applicant
- the applicant appears unaware of the prohibition.
- a packaged liquor sales business must be entirely devoted to the sale of packaged liquor and the intermingling of businesses should not be permitted as there is no application for exemption from these requirements, the application for the licence must fail.
- there is no evidence that it is in the public interest to allow this store to sell liquor. The liquor products to be offered by this store are already available elsewhere.
- the objects of the Act include that the sale and supply of liquor is consistent with the expectations and aspirations of the public. The public is not a few customers relied upon in support of a particular application

I am satisfied that the granting of this application is in the community interest.

Premises

New Premises

The licensed area is outlined in red on the approved plan.

Capacity

Trading hours

The following are the approved trading hours

| | Consumption on premises | Consumption off premises |
|-----------|-------------------------|--------------------------|
| Monday | - | - |
| Tuesday | - | 10:00 am to 5:00 pm |
| Wednesday | - | 10:00 am to 5:00 pm |
| Thursday | - | 10:00 am to 5:00 pm |
| Friday | - | 10:00 am to 5:00 pm |
| Saturday | - | 10:00 am to 5:00 pm |
| Sunday | - | - |

Reasons for Decision

In reaching my determination, I have had regard to the objects of the *Liquor Licensing Act 1997*.

This is an application by an existing grocery store to permit the sale of packaged liquor from a particular region of Europe.

The applicant also operates a grocery store at Findon which sells a select range of liquor from certain European countries. The "Findon store" was granted a special circumstances licence (as it then was) in 2012. I note that application was opposed by the AHA and Commissioner of Police and the licence was subsequently granted, subject to 11 conditions.

In simple terms, the applicant was at that time able to satisfy the authority that no other category of licence could adequately accommodate the proposed business model. This is significantly different to the current "test" which requires the applicant to satisfy the authority that the grant of its application is in the community interest.

The application has attracted a submission from the AHA opposing the grant of the licence, contending that the application is not in the community interest and contrary to the relevant provisions of the Act, namely;

s38(3) In addition, it is a condition of a packaged liquor sales licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes

- (4) the licensed premises will not be regarded as physically separate from premises used for other commercial purposes unless
 - (a) the licensed premises are separated from other premises by a permanent barrier that is not transparent and is of a height of at least 2.5 metres
 - (b) the licensed premises cannot be accessed from other commercial premises
- (6) the licensing authority may grant an exemption from the condition under subsection (3) if, in the opinion of the licensing authority, it is in the public interest to do so
- (7) a packaged liquor sales licence may only be granted in respect of premises of a prescribed kind if the licensing authority is satisfied that there is a proper reason to do so.

The plans submitted with the application clearly show the proposed licensed premises to be within the main walls of the existing grocery store, that is "premises used for other commercial purposes". Neither the plans nor the application material mention a non-transparent barrier of 2.5 metres in height.

Section 38(6) of the Act does allow the authority to grant an exemption from this requirement. The applicant has not sought such an exemption and has not explained why it would be in the public interest to do so. However, the applicant has gone to great lengths to explain its method for separating liquor from other products, and on the basis that liquor will not be displayed at all in the store I think it is appropriate to grant the exemption in accordance with s38(3)

Further, section 38(7) of the Act refers to premises of a "prescribed kind", which are defined in the *Liquor Licensing (General) Regulations 2012* to include:

- (a) premises used primarily as a restaurant or for the preparation and sale of food for immediate consumption off the premises (or both)
- (b) premises ordinarily known as or advertised as a supermarket, convenience store or delicatessen
- (c) premises used primarily for the sale of non-consumable, domestic or commercial goods and merchandise;

(d) petrol stations,

It is apparent to me, from the description of the premises provided by the applicant that it fits within the definition of "prescribed kind". The applicant has stated that it already holds a liquor licence for a similar style store which it operates at Findon, and has suggested that customers at the Pooraka store have indicated that they would also like to purchase similar liquor products. Given that the range of liquor offered is limited, from a specific region of Europe compatible with the other products available in store and not on display, I am satisfied that there is a good reason to allow the sale of liquor from these premises under those circumstances.

It is also of concern to me that the applicant's submission in respect of potential harm is so brief as to suggest that there are no "at risk" groups within the locality. Harm minimisation is a key component of the community interest test, underpinned by the first object of the Act; "to ensure the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor."

This position is supported by the recent decision in *Hove Sip N Save [2021] SALC 7*, His Honour Judge Gilchrist clearly stated at [105] and [106] the importance of harm minimisation to the consideration of community interest:

"Operating a take away liquor facility is a serious business. Much of the alcohol that is consumed in this State is purchased from such facilities. Thus, there is a significant potential for the products sold in them to cause harm to members of the community."

Harm minimisation is a key component of the community interest test. In conformity with this, there is a heavy burden on the proposed operators of take away liquor facilities to demonstrate the steps they will take to ensure that liquor is not sold or supplied to minors or intoxicated persons and that their sale and supply of liquor will not promote harmful drinking practices."

It is fair to say that the introduction of a new liquor outlet carries with it some degree of potential harm to vulnerable groups within the community. I can accept on the basis of the applicant's submissions that the range of liquor will remain limited, and not be readily accessible to customers, will in part reduce the risk to vulnerable groups. It is also to be expected that if persons can only purchase liquor after selecting it from a brochure, that the staff member will have ample opportunity to assess any potential risks.

The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest. On the basis of the information provided, together with the application, I am satisfied that the grant of this application is in the community interest.

I have had the benefit of a number of recent Licensing Court decisions, including *Hove Sip N Save [2021] SALC 7*, *Liquorland P/L Parkholme [2020] SALC 37* and *Cellarbrations Mannum [2021] SALC 42*. Whilst those decisions relate to a more traditional "bottle shop" model of packaged liquor sales licences, I am bound by the Court's position in *Hove Sip N Save* and *Cellarbrations Mannum* at [126]

"If the grant of this application would lead to an undue proliferation of like licensed facilities or if it was to set an undesirable precedent, in the public interest the application would be refused"

The applicant has suggested that there is a "need" for its licence and there is a strong desire for members of the community to be able to purchase the select range of liquor it would like to stock. I accept that the proposed liquor offering is very different to that usually available at liquor stores such as *Cellarbrations*, *Liquorland* or *Sip N Save*, and provided that the sale and supply of liquor occurs in accordance with the following conditions I can be persuaded that the grant of this application is unlikely to set an undesirable precedent.

- Liquor shall not be displayed or advertised within the grocery store (other than by provision of a catalogue to

allow customers to select their products)

- No more than 100 items of liquor stock may be kept on the premises at any one time
- The business conducted under this licence shall at all times be primarily and predominantly that of a mini mart with the sale of liquor being ancillary to this.
- The sale of liquor is restricted to the following brands: the following brands: Zuta Osa, Manastirka, Viljamovka, Slijvovica, Vino Zdrepeva Krv, Kleka, Lincura, Stomaklija, Lozovaca, Medvedja, Krv, Kupinovo Vino, Carica Milica, Car Lazar, Vino, Lav Pivo and Jelen Pivo

Under Delegation from the Liquor and Gambling Commissioner



Vicki Brunello
Hearings Delegate
02 Jun 2021