

*KSM Liquor Pty Ltd* [2019] SALC 1

**LICENSING COURT OF SOUTH AUSTRALIA**

KSM Liquor Pty Ltd

**JURISDICTION:** Application for Retail Liquor Merchant's Licence

**FILE NO:** 4209/2018

**HEARING DATE:** 11 – 13 February 2019

**JUDGMENT OF:** His Honour Auxiliary Judge WD Jennings

**DELIVERED ON:** 19 February 2019

**CATCHWORDS:**

*Application for a Retail Liquor Merchant's Licence - Whether the licensed premises that already exist within the locality of the proposed facility are adequately catering for the public demand for takeaway liquor - Whether in the exercise of the Court's discretion the application should be refused - **Held** that the applicant has satisfied the prerequisites for the grant of a retail liquor licence for the proposed facility - **Held** that the public interest does not require the refusal of the application in the exercise of the Court's discretion.*

*Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* (2000) 76 SASR 290  
*Liquorland (Australia) Pty Ltd v North Adelaide Village Shopping Centre Pty Ltd and Village Cellars (SA) Pty Ltd* [2012] SALC 42  
*Woolworths Limited* [2013] SALC 23  
*Lovell v New World Supermarket Pty Ltd* (1990) 53 SASR 53  
*Woolworths Ltd v Drase Coosit Pty Ltd* (2010) 106 SASR 146

**REPRESENTATION:**

Counsel:

Applicant: Mr Michael Roder SC

Respondent: Mr Ben Doyle

Solicitors:

Applicant: Wallmans Lawyers

Respondent: Clelands Lawyers

- 1 On 13 February 2019, I granted an application by KSM Liquor Pty Ltd for a retail liquor merchant's licence in respect of premises to be constructed at 121 Old Princes Highway, Nairne. These are my reasons for doing so.
- 2 To succeed in this application, KSM Liquor needed to meet the pre-requisites of ss 57 and 58 of the *Liquor Licensing Act 1997*. It also needed to persuade me, in the exercise of the Court's discretion, that the licence should be granted.
- 3 Section 57 concerns matters such as the suitability of the premises; the potential for them to raise undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools; and whether the appropriate approvals, consents and the like, pertaining to the proposed premises have been granted.
- 4 None of these matters are at issue in this case.
- 5 The applicant, KSM Liquor, is a corporate entity that operates several Foodland supermarkets across the Adelaide Hills, in particular Birdwood, Woodside, Lobethal, Balhannah and Littlehampton. The licence was sought to operate a proposed walk-in bottle shop from a shopping centre to be built on the former Chapman's Smallgoods site on the corner of Old Princes Highway and Bridge Street in Nairne. The bottle shop will be adjacent to the centre's anchor supermarket which will have a floor area of 2,044 square metres. On the other side, there will be five smaller retail tenancies.
- 6 The proposed bottleshop will trade as a Cellarbrations store. It will stock a similar range to other Cellarbrations stores, with a particular emphasis on Adelaide Hills and local wines. What is contemplated is a modern well stocked retail liquor facility.
- 7 The proposed premises are about to undergo development, with an expected completion date of late November to early December 2019.
- 8 Section 58(2) requires an applicant for this type of licence to satisfy the Court that:

...the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.
- 9 This was the only matter of contention in this case.
- 10 The applicant initially drew an objection from the licensee of a nearby hotel, Millers Arms Hotel, located 700 metres to the west of the proposed

premises on the Main Road of Nairne. However this objection has since been withdrawn.

- 11 In determining whether this test has been met, licensed premises within and outside the boundaries of the locality had to be considered.<sup>1</sup>
- 12 The town of Nairne is a typical country town with a main street that contains most of the town's retail and commercial activity which, from observation, appeared to be fairly limited.
- 13 In terms of population size, Nairne has undergone an extraordinary growth within the past decade. It now has a population of at least 5,042 people and there are further infield areas to be developed. Several hamlets such as Dawesley, Kanmantoo, Brukunga and Blakiston, exist outside Nairne, each with a population of several hundred. The combination of the population of Nairne with these hamlets would bring the total population figure to over 6,000.
- 14 The applicant relied upon the expert opinion evidence of Mr Graham Burns, planning consultant. Mr Burns determined that the locality of the proposed premises was generally defined by an area that included the entire township of Nairne, together with its surrounding rural vicinity. I accept Mr Burns' identification of the locality. I also accept the evidence of Mr Nicholas Klose, managing director of the applicant.
- 15 The town of Nairne currently does not have a supermarket or a bottle shop. The Millers Arms Hotel shut down in 2015 and has been undergoing renovation since then. Its licence has been suspended until 31 October 2019. The expected renovation plans include an adjoining bottle shop located behind the hotel. This bottle shop, however, will be significantly smaller than the proposed premises at 39 square metres. The only other hotel in Nairne, District Hotel, carries a very limited range of products and does not appear to have facilities for the sale of packaged liquor. It is obvious that the current facilities in Nairne do not adequately cater to the relevant public's demand for liquor.
- 16 In *Liquorland (Australia) Pty Ltd v North Adelaide Village Shopping Centre Pty Ltd and Village Cellars (SA) Pty Ltd*, it was observed that some people do not like purchasing takeaway liquor from a hotel and would prefer to make their purchases from a dedicated retail facility.<sup>2</sup> Those observations are appropriate here.
- 17 To buy liquor, Nairne residents either travel twenty minutes roundtrip to the Great Eastern Hotel drive through bottle shop in Littlehampton or thirty minutes roundtrip to several bottle shops in Mount Barker.

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<sup>1</sup> *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* (2000) 76 SASR 290, 299.

<sup>2</sup> [2012] SALC 42 at [85].

- 18 My inspection of the drive through bottle shop at the Great Eastern Hotel in Littlehampton found that it had a comparable range to the proposed facility. However, I observed that it had a very limited amount of off-street parking. I am also aware that drive through bottle shops may not be comfortable environments, taking into account its exposure to the elements and restricted space. This Court has also accepted that a proportion of the public do not purchase takeaway liquor from a drive through and would prefer to make their purchases from a dedicated retail facility.<sup>3</sup>
- 19 In determining its adequacy I thought that the evidence of Nairne residents, Ms Hann, Ms MacKellar, and Mr Cowell, was telling. They were impressive witnesses and I accept their evidence.
- 20 The common thread is that they expressed dissatisfaction with their current situation. All of them travel considerable distances to work, leaving for work around 7:00 am and arriving back at their homes around 5:00 pm. They attempt to limit their shopping for groceries and liquor to once a week on their way home from work to reduce travelling time but it is often the case that they may need to go out upon arriving home or a couple more times throughout the week to buy more liquor. They find the effort to travel another 20 minutes to Littlehampton or 30 minutes to Mount Barker to buy their liquor to be both inconvenient and tiresome.
- 21 They found the nearby location of the proposed premises with its attached supermarket to be a much more convenient alternative to travelling the substantial distances. Several witnesses expressed a preference for Adelaide Hills and local wines and as such, found the proposed stock list of the proposed premises to be attractive.
- 22 I concluded that their views expressed above reflect the views of a significant number of people who are residents within the locality.
- 23 I find that collectively the liquor takeaway facilities that I have identified above do not adequately cater for the relevant public demand for liquor for consumption off licensed premises. Accordingly, I formed the view that the proposed premises are necessary to satisfy that demand.

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<sup>3</sup> *Woolworths Limited* [2013] SALC 23 at [96].

24 As to the issue of discretion, a relevant consideration in determining this is clear evidence that has emerged from many cases of the community's wish for one-stop shopping.<sup>4</sup> It led me to say when I granted this application that the public interest does not require the refusal of the application. Indeed, to the contrary, the grant of this licence is in the public interest. Many of the people living in the locality can be expected to use the new supermarket once it is constructed. The addition of a retail liquor facility will further add to its attractiveness and will meet a growing desire by many to combine their takeaway liquor purchases with their supermarket shopping.

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<sup>4</sup> See *Lovell v New World Supermarket Pty Ltd* (1990) 53 SASR 53, 58 (Cox J); *Woolworths Ltd v Drase Coosit Pty Ltd* (2010) 106 SASR 146, 158-9 (Kourakis J).