

Costco Wholesale Australia Pty Ltd [2017] SALC 73

LICENSING COURT OF SOUTH AUSTRALIA

COSTCO WHOLESALE AUSTRALIA PTY LTD

JURISDICTION: Application for a Retail Liquor Merchant's Licence

CASE NO: 2101 of 2017

HEARING DATE: 28 and 29 September; 19 October 2017

JUDGMENT OF: His Honour Judge Gilchrist

DELIVERED ON: 21 December 2017

CATCHWORDS:

*Application for a retail liquor merchant's licence - Whether the pre-requisites provided by s 58(2) have been met and whether in the Court's discretion the licence should be granted - How locality is to be determined in connection with a proposed facility that will draw patrons for a large area - Whether the unique attributes of the applicant's proposal and the evident desire of its members to buy liquor at its store meets the requisite test - **Held** that Costco is not a locality in its own right - **Held** that those using Costco would have available to them many retail liquor outlets on their way to and from Costco and near to where they live or work and there is a perfectly satisfactory retail liquor outlet 50 metres or so away from Costco - Pre-requisites for the grant of a retail liquor merchant's licence not met - **Held** that in any event in the exercise of the Court's discretion the licence should not be granted because to do otherwise would create an undesirable precedent - Ss 53, 57, 58 and 59 Liquor Licensing Act 1997.*

Costco Wholesale Australia Pty Ltd [2014] SALC 55.

Costco Wholesale Australia Pty Ltd [2016] SASCF 75.

Woolworths Ltd v Fassina Investments Pty Ltd & Ors (2015) 122 SASR 535

Woolworths Ltd (BWS Woodcroft) v Carleton Investments Pty Ltd and Others [2016] SALC 35

Liquor Stores Association Inc v Wine Net Australia Pty Ltd [1999] SASC 238

South-Eastern Hotel v Woolies Liquor Stores Pty Ltd (1998) 71 SASR 402

Marion Cellars [2002] SALC 5

Woolworths Ltd v Drase Coosit Pty Ltd [2010] SASC 13

REPRESENTATION:

Counsel:

Applicant: Mr J Firth with Mr B Moody

Respondent: Mr B Doyle with Mr D Meegan

Solicitors:

Applicant: Duncan Basheer Hannon

Respondent: DMAW Lawyers

- 1 This is an application for a retail liquor merchant's licence.
- 2 The applicant, Costco Wholesale Australia Pty Ltd, is the proprietor of Costco Wholesale. It seeks the licence in respect of premises situated at 380 to 408 Churchill Road, Kilburn.
- 3 The proposed premises are within a building which is very large, comprising of some 14,000 square metres that houses a Costco Wholesale store. It is part of a major retail development on the former site of the Islington Railway yards, known as the Churchill Centre.
- 4 The Churchill Centre is a large sub-regional shopping development. It houses a large variety of specialty shops offering a variety of goods ranging from fresh food to home ware, fashion and technology items. It also has larger retail outlets such as Cheap as Chips, K Mart, Dick Smith and Coles. Just outside the Coles store in an internal mall is an attractive, modern store trading as a Liquorland. My impression, based on the view of this store, is that it carries a slightly more comprehensive range of products than a typical Liquorland store. It appeared to be a well-stocked retail liquor facility.
- 5 Significant modifications will have to be made to Costco's building to accommodate the proposed bottle shop. Although the proposed shop is within the boundaries of the Costco store patrons will need to leave the store to come through another entrance outside, to access it. Accordingly, the applicant seeks a certificate under s 59 of the *Liquor Licensing Act 1997* for the proposed premises.
- 6 To succeed in this application Costco needs to satisfy the Court that the pre-requisites of ss 57 and 58 of the Act have been met and that in the exercise of the Court's discretion the licence should be granted.
- 7 Section 57 concerns matters such as the suitability of the premises; the potential for them to cause 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.
- 8 None of these matters are at issue in this case.
- 9 What is in dispute is whether the pre-requisites provided by s 58(2) have been met and whether in the Court's discretion as provided for by s 53 of the Act the licence should be granted.
- 10 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.”

- 11 The application has drawn objections from the Australian Hotels Association and a number of hotels near the proposed premises.
- 12 Costco had previously applied for a special circumstances licence in respect of the same premises in 2014. That application was refused by this Court on 16 October 2014.¹ An appeal from that decision was dismissed by the Full Court in July 2016.²
- 13 Although this Court thought that Costco had satisfied the pre-requisites for the grant of a special circumstances licence it held that in the exercise of its discretion it should not grant the licence. In coming to the conclusion that the pre-requisites had been met, this Court proceeded from the premise that Costco could not successfully apply for a retail liquor merchant’s licence because its business model excluded the general public in the sense that it is not open to the public at large. To shop at a Costco store the customer must have a membership card. The membership fees in Australia are \$60 a year. To obtain membership a person has to be 18 years or over and needs to present some photo identification. If it is a business, a taxation file number or other business proof must be supplied. A member must supply a name and address. The membership is renewable each year. The membership is not transferable although a gold star membership will be issued with two cards, one for the principal and one for somebody else at the same address, provided that person’s picture is also provided.
- 14 On appeal the Full Court held that this Court erred in so concluding. Parker J, with whom the other members of the Court agreed, said:

“I consider that Costco members are merely a class of the general public and thus Costco is selling to the public. I hold that view because the rights of members are limited to entering and making purchases, the requirements for acceptance as a member are far from onerous, and, most importantly, because Costco does not undertake any form of selection process before admission to membership. Thus, the circumstances of Costco members cannot relevantly be distinguished from the member of the nightclub in *Panama (Piccadilly) Ltd v Newberry* or the entrant to the caravan park in *Director of Public Prosecutions v Vivier*.

¹ *Costco Wholesale Australia Pty Ltd* [2014] SALC 55.

² *Costco Wholesale Australia Pty Ltd* [2016] SASFC 75.

Although the parties had not contended otherwise before his Honour, I consider that the judge erred in finding that Costco would not qualify for a retail liquor merchant's licence because of the membership requirement."³

- 15 Costco was doubtless encouraged by those remarks in pursuing the within application.
- 16 In support of the application Costco relies upon the evidence of its managing director and vice president, Mr Patrick Noone, the warehouse manager at the Kilburn store, Ms Teri Moore, and its Australian liquor buyer Ms Jody Farrell.
- 17 I also heard and received evidence from a sample of Costco members. Ms Anna-Lyse Hambour, Ms Roslyn White, Mr Chad Toogood, Mr Ian Hampton, Mr Neil Paterson, Ms Leanne Fischer, Ms Catherine Williams and Mr Guhan Sabathy.
- 18 Mr Noone also gave evidence in connection with Costco's earlier application for a special circumstances licence. At that time Costco had not yet commenced to trade in South Australia such that his evidence was based on what he anticipated would occur. He expected customers to shop at a Costco just under once a month. In his evidence in this application he said that customers visit on average just over ten times a year. Back then he said that Costco customers generally spend about \$175 per shop, excluding petrol. In his evidence he said that the average transaction as about \$120 per visit.
- 19 He previously spoke of the fact that most of the goods on offer were brand names and that Costco also sells goods under its own name, Kirkland. He said that the majority of its stores sell take away liquor. The liquor on offer is generally of very high quality, including French Champagnes and table wines, very old malt whiskies and imported beers. He said that none of Costco's liquor would be refrigerated. He said that Costco's business model for the Adelaide store contemplated a stock list of initially 267 and no more than 300 lines, this being consistent with its business model elsewhere. He contrasted this with the range at say a typical BWS store which can be expected to carry over 2,000 items.
- 20 In giving evidence in the later hearing he gave similar evidence. He went further and made a comparison with Dan Murphy's and First Choice which he noted carry between 3,000 and 5,000 lines.
- 21 In cross examination Mr Noone accepted that there had been a change in the proposed product offering compared to when he last gave evidence. He agreed that the now proposed offering would contain more

³ *Costco Wholesale Australia Pty Ltd* [2016] SASCFC 75.

domestically made beers. He said that Costco was being responsive to the market in other States where it sells liquor. He spoke of customers wishing to buy mainstream beers in large quantities. He also agreed that in respect of wines there was less of a focus on international offerings and less of a focus on premium wines than before and that it now sold more Australian wine.

22 Mr Noone accepted that the average household would spend about \$150 a week or \$600 a month on groceries and that if the average Costco spend was converted to a weekly amount and was confined to groceries the amount would be of the order of \$60 to \$80 a month. He agreed that the average household would buy groceries at least once a week. He agreed that they are likely to do so from stores closer to their homes and would likely have access to conventional bottle shops when doing so.

23 As before, I accept Mr Noone's evidence.

24 Much of his evidence and the other evidence given by Costco executives was relatively uncontroversial. I make the following findings by reference to the evidence adduced in this case and the findings that were made in connection with Costco's previous application for a special circumstances licence.

25 Like its stores elsewhere, Costco's Adelaide store has the appearance of a warehouse. It has a concrete floor. It uses steel racking. Most of the merchandise is displayed on pallets. The store sells a vast array of goods ranging from car tyres to hearing aids, outdoor patio equipment, swim and sporting goods, designer clothes, gardening items, clothes, deli goods, meat, bakery items and electrical appliances. Most of the goods on offer are higher end brand names. Costco also sells goods under its own name, Kirkland. Its prices are very competitive.

26 The Adelaide store has a fuel outlet. It is a fully self-serviced operation. Members insert the membership card to be verified, and then insert a credit card or a debit card, fill up the vehicle, get a receipt and drive off. If the person is not a member the pump will not operate.

27 Some 94,000 members are associated with the Adelaide store. They conduct 1.3 million transactions at the store every year. They visit on average something like once a month, spending on average around \$120. They come from all over metropolitan Adelaide and beyond.

28 I now turn to discuss the evidence of Costco members.

Ms Hambour

29 She recently moved to Adelaide. She previously lived in Canberra and shopped at the Costco store there. She used to buy liquor from that store.

She was happy with its range and prices. For now she buys take away liquor from Dan Murphy's. She shops at Costco about once a month. If Costco was granted a retail liquor merchant's licence she would buy liquor there. She and her partner regularly shop for fresh fruit and vegetables and meat and general grocery items at the Welland Shopping Centre and at the Brickworks Shopping Centre. Both have Dan Murphy's stores. Whilst she would like to option of being able to purchase liquor from Costco, her take away liquor needs are for now being met by Dan Murphy's.

Ms White

- 30 Ms White and her husband live at Sellicks Beach. They work all over South Australia. They have a fleet of vehicles. They take advantage of Costco's cheap fuel. She has used Costco's store in Moorabbin, Victoria. On an occasion she spent \$3,000 there, buying a wine fridge and wines, spirits and imported beer. They visit the Costco store at Kilburn often. They are in the habit of giving liquor as gifts. If given the option she would like to buy some of the ornate and decorative bottles of liquor on offer at Costco stores.

Mr Toogood

- 31 Mr Toogood lives at Tranmere. He shops at Costco about once a month. For now he purchases take away liquor about once a month at a variety of places based on convenience. He would like the option of being able to purchase liquor from Costco.

Mr Hampton

- 32 Mr Hampton works north of Gawler. He buys bulk food from Costco and spends between \$500 and \$700 each time he shops there. For now he buys take away liquor from the Old Spot Hotel at Salisbury Heights and from the Dan Murphy's at Highbury. If Costco was granted a retail liquor merchant's licence he would buy liquor there. He would, however, continue to buy liquor from the Old Spot Hotel and from Dan Murphy's.

Mr Patterson

- 33 Mr Patterson used to live in Canberra and used the Costco store there. He thought its prices were a "little cheaper". He is now retired and lives in Littlehampton with his wife. They presently shop at Costco about once a month. They buy everyday items at the Woolworths at Mount Barker. He buys take away liquor from the Dan Murphy's in Mount Barker and sometimes from the Pulpit Cellars. He would like the option of being able to purchase liquor from Costco.

Ms Fischer

- 34 Ms Fischer lives in Salisbury East. She works next to Costco. She shops there about once a month. She would like the option of being able to purchase liquor from Costco. For now she buys take away liquor from BWS and Liquorland stores. Her impression is that liquor would be cheaper at Costco.

Ms Williams

- 35 Ms Williams lives at Mawson Lakes. She moved to Adelaide less than a year ago. She uses the Costco in Adelaide every few months. She drives to Canberra every few months for work. When visiting Canberra she buys good quality wines in bulk at the Costco store there. She would like to be able to do the same at the Costco store in Adelaide.

Mr Sabapathy

- 36 Mr Sabapathy lives in Beaumont, not far from the Dan Murphy's at Glenunga. He has visited interstate Costco stores and has found wines there that interest him are not stocked by Dan Murphy's.

Ms Moore

- 37 Ms Moore said that some customers, based on their experience interstate, expressed disappointment when Costco first opened that it was not selling liquor. She also spoke of ongoing complaints made by Costco members about that fact. It was put to her that the fact that Costco advertises nationally and its brochures include liquor might cause members to wonder and complain that they are treated differently to Costco members interstate. She disagreed.

Costco's submissions

- 38 Costco's case can be summarised as follows.
- 39 Costco contended that in connection with the Act, the notions of "need" and "adequately cater" are evolving concepts. It relies upon the decision of the Full Court in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors*.⁴ It said that in conformity with the approach taken in that case the test of "adequately cater" involves more than simply considering the degree of difficulty and inconvenience in the relevant public in purchasing take away liquor and that community expectations can in appropriate circumstances be an important consideration.
- 40 Costco's case is based on the uniqueness of its offering that sells high quality goods in bulk at very competitive prices. It contended that there

⁴ (2015) 122 SASR 535.

is significant support for its business as evidenced by its large membership and continued growth. The majority of Costco stores worldwide, sell take away liquor. In Australia, all stores except those in Queensland and the Adelaide store, do so. The liquor on offer in those stores is generally of high quality, including French Champagnes and table wines, expensive whiskies and imported beers. Most wines are in the \$15 plus price range. They are not refrigerated. They only carry a limited number of lines, less than 300. Its business model for the Adelaide store contemplates a similarly limited stock list. As with other products in its stores, there will be regular changes in the stock available, such that patrons are attracted to the store to explore what is new and different.

- 41 It submitted that its unique offering is to be contrasted with typical retail liquor stores like BWS stores and Liquorland. It said that the proposed store will carry a range of unique products including its own unique and high quality “Kirkland Signature” range. It said it is a very different offering to the Liquorland store inside the Churchill Centre. It said that it is a vastly diminished offering by comparison to that available in large format destination stores like Dan Murphy’s, First Choice and Fassina that offer a vast array of liquor products.
- 42 It submitted that most of its members travel substantial distances to shop at Costco. It submitted that the member witnesses established that a number of them would strongly prefer one-stop shopping and would prefer to service their take away liquor needs at Costco in lieu of the other take away facilities that are available to them. It said that its members have a reasonable expectation to be able to one-stop shop in bulk at its unique destination and that they have a reasonable expectation to purchase quality and interesting and in some cases unique liquor at very competitive prices within that same shopping experience. It relied upon the inquiries and complaints from members in relation to the absence of a liquor outlet at the Kilburn site.
- 43 It submitted that in light of Costco’s unique attributes and its very wide catchment area the relevant locality might be thought to be very large. It said that within the locality there is nothing like the very unusual and unique bottle shop that Costco proposes.
- 44 It said that given the evident desire of its members to access such a shop, and given their plentiful number, I should be satisfied that the pre-requisites to the grant of a retail liquor licence have been met.
- 45 It further contended that the grant of this licence will fulfil the objects of the Act, which includes s 3(1)(c), “To ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the

community” and s 3(1)(e), “To encourage a competitive market for the supply of liquor.”

The objector’s submissions

- 46 The objectors contended that the mere fact that a large proportion of Costco’s customers come from far and wide does not mean that the concept of locality is irrelevant. They submitted that whilst the concept of locality means more than simply the local community, it nevertheless has a geographical connotation and in conformity with settled authority it denotes in a general way the fact of being local or neighbouring, as opposed to distant or remote.
- 47 They submitted that in assessing whether the retail facilities in and about the relevant locality are adequately catering for public demand, the onus is on the applicant, and that matters such as preference to style, choice, convenience and the like, whilst not irrelevant, are not determinative because the focus of the enquiry is demand for liquor, not the needs of the public.
- 48 They said that “adequately” means just that and must be viewed in a reasonable and realistic sense. Hence, they said, that even though accessing the existing facilities might involve some level of inconvenience for Costco’s customers, it does not follow that they are not adequately catering for public demand.
- 49 They submitted that the notion of a growing trend on one-stop shopping was not supported by the evidence given in other cases. Reference was made to an observation made recently in this Court in *Woolworths Ltd (BWS Woodcroft) v Carleton Investments Pty Ltd and Others* where it said:
- “Moreover, I think there is something in what Mr Roder said about the inconsistency between the so called one-stop shop notion and the recurring evidence of shoppers in this and other cases of making multiple trips to shops to make small purchases.”⁵
- 50 They submitted that it was borne out by the evidence given in this case, in that it was obvious that many of Costco’s customers were shopping on a regular basis, at shops besides Costco. They said that in this case the notion of one-stop shopping should be given little weight because by and large Costco customers are not one-stop shoppers.
- 51 They submitted that looked at in this light the fact that there is a relatively well stocked Liquorland store some 50 metres away was telling and in terms of convenience there was little to separate leaving

⁵ [2016] SALC 35 at [160].

Costco to buy liquor at Liquorland and leaving Costco to come through another entrance to buy liquor at Costco.

Consideration

- 52 I accept that by South Australian standards, Costco is a unique shopping experience. I accept that its business model contemplates the sale of liquor and that the style of presentation and the range of liquor is in a number of respects “different” to conventional liquor stores. Costco is plainly a very popular store that draws customers from all over metropolitan Adelaide and beyond. I expect that many of its members would be attracted to its proposed liquor store and if given the opportunity would purchase liquor when buying fuel or making other purchases from Costco. If the test for the grant of a retail merchant’s liquor licence was based on whether a sufficient proportion of the public want the proposed facility it is likely that the application would succeed.
- 53 But that is not the test that I must apply. The relevant threshold that an applicant must meet is to establish that the licensed premises already existing in the relevant locality do not adequately cater for the public demand.
- 54 In the context of this case two important things follow from that.
- 55 The first is that the Court must, at least in a general way, reflect on what is the relevant locality. As Perry J observed in *Liquor Stores Association Inc v Wine Net Australia Pty Ltd* in connection with a business model concerning a retail liquor licence that had the whole of the State as its potential market, the Act contemplates that “the operation of the licence will have a real relationship to the immediate area in which it is situated.”⁶ Thus there is no getting away from the fact that the retail liquor licence that is being sought in this case is for premises at Islington.
- 56 The second is that the test requires consideration of the “public’s demand”, not the “public’s needs” or indeed the “public’s wishes”. That is not to say that the public’s needs or wishes are irrelevant. It is simply to recognise that “demand” is a narrower concept than needs or wishes. This is made clear in the judgment of Doyle CJ in *South-Eastern Hotel v Woolies Liquor Stores Pty Ltd*, where he said:

“The language used by Parliament suggests that, as before, the focus of s 58(2) is upon the demand for liquor and the availability of liquor, whereas the focus of s 58(1) is on the needs generally of the public in the locality, although of course those needs are to be considered in relation to the facilities that might be provided by a hotel licence. That broader focus in relation to a hotel licence is apt

⁶ [1999] SASC 238 at [84].

to enable more emphasis to be given to the wishes and preferences of the public in relation to matters of style of premises, the availability of choice and of a variety of outlets, matters of preference, matters of convenience and so on.”⁷

- 57 Sometimes the characteristics of a shopping centre are such that the public’s expectation that the centre will have a retail liquor outlet will be decisive and it will not matter that those using the centre will pass many retail liquor facilities in travelling to and from the centre. In these cases, in a sense, the shopping centre is the relevant locality. So unique where the characteristics of the Marion Shopping Centre that this Court granted a second retail liquor merchant’s licence in *Marion Cellars*.⁸ Similar sentiments underpinned the grant of a retail liquor merchant’s licence at the Arndale Shopping Centre in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors*.⁹
- 58 Unlike those cases, here, in terms of identifying the relevant locality, I think this case has much in common with *Woolworths Ltd v Drase Coosit Pty Ltd*.¹⁰ That case concerned Harbour Town, a large retail development adjacent to the Adelaide Airport that contains amongst other facilities many brand direct outlets selling products at lower prices. There was evidence placed before the Court that around half of Harbour Town’s customers came from within ten kilometres and that some 16% of its customers came from regional South Australia or interstate. It was argued that this made Harbour Town unique because it was the only brand direct outlet centre in the State, and because it drew its customers from greater distances than centres which are larger in size than Harbour Town. Hence it was argued that Harbour Town itself was the “locality” for the purposes of s 58(2) of the Act. This argument was rejected by this Court and by the Supreme Court on appeal. On appeal, Doyle CJ, with whom White J agreed, said:

“It is clear that Harbour Town attracts people from nearby suburbs. I have no doubt that a number of them use the supermarket at Harbour Town. There is no reason why the locality should not be identified in the usual way, taking into account the facilities at Harbour Town and in neighbouring suburbs, and where people live and shop and patterns of movement. The circumstance that Harbour Town is used extensively by people from relatively far away is also a factor, but does not to my mind point towards a conclusion that Harbour Town is the locality. Harbour Town is a feature of the locality, a facility which happens to be used by people from near and far.”¹¹

⁷(1998) 71 SASR 402 at 404

⁸ [2002] SALC 5

⁹ (2015) 122 SASR 535

¹⁰ [2010] SASC 13

¹¹ *Ibid* at [34-5]

- 59 In this case, attractive as the shopping centre may be, it is not the mini city that Judge Kelly spoke of in *Marion Cellars*. Nor is it the large regional shopping centre that Parker J described in *Woolworths Ltd v Fassina Investments*. It is no more than a sub-regional shopping centre. As for the Costco store itself, just as Harbour Town is a feature of the locality, Costco is no more than a feature of the shopping centre that, like Harbour Town, happens to be a facility which is used by people from near and far.
- 60 Thus in terms of locality I need to look further than just the Costco store.
- 61 It is clear from the evidence that most of the people who shop at Costco are not going there for their regular shopping needs and that a substantial proportion of its customers are making only occasional trips. Doubtless some of them would find it convenient when doing so, to buy liquor there. But, in terms of liquor generally, there can be no doubt that those using Costco would have available to them many retail liquor outlets on their way to and from Costco and near to where they live or work. And in any case, there is a perfectly satisfactory retail liquor outlet 50 metres or so away from Costco in the Shopping Centre itself. It follows that the public's demand for liquor generally can be satisfied elsewhere, without any discontent or significant inconvenience.
- 62 What then of Costco's supposed unique offering?
- 63 When it is all said and done Costco offers a range of Australian and international beers, wines and spirits at competitive prices and it carries some labels that are unique to it. This sounds like the mantra of any of the large format destination stores that trade in this State, with the qualification that Costco has a much more limited range than those stores. Costco may from time to time sell novelty products in its liquor stores. However, in the words of Mr Noone, ultimately its range will be responsive to the market. As such, by and large it will be selling a range of products that most retail liquor facilities will stock. For the reasons outlined above, the wishes and preferences of the public in relation to matters of choice of liquor are not especially prominent in determining whether public demand has been met. To the extent that they are, there is no compelling evidence that establishes that that demand is not being adequately met.
- 64 In my view, the pre-requisites for the grant of a retail merchant's liquor licence have not been established.
- 65 Even if they had been, I would be inclined to exercise my discretion to refuse to grant the licence.
- 66 Costco's case for a licence is based on the premise that it is an extremely popular store that draws patronage from a large area, its business model

contemplates the sale of liquor as part of its offering, the range, style and presentation of liquor available at its stores is in some respects quite different to other liquor stores and its customers would like the opportunity to buy liquor when they visit its store.

- 67 If this provides a sufficient basis to succeed in the grant of a retail liquor licence a case could be made for any retailer to argue the same thing. These licences would be granted not on the basis of a genuine need because of the inability of existing premises in a particular locality to adequately cater for public demand. They would be granted because a retail outlet, wherever it might be situated, and irrespective of the number of retail liquor facilities nearby, can establish that it is very popular, it draws patronage from a large area, and it operates under a business model that contemplates the sale of liquor and creates in some respects a point of difference in respect of its range of liquor and how it is presented relative to conventional outlets.
- 68 If licences were granted for these reasons the potential for unnecessary proliferation is self-evident. Albeit for different reasons, I repeat what I said in connection with Costco's earlier application:

“In the end, like Doyle CJ in *Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd*, I consider that ‘the issue which arises here is one which calls for a cautious approach. If an undesirable precedent is set, the Licensing Court will be left to cope with the effects of that precedent’.”¹²

- 69 The application is refused.

¹² *Costco Wholesale Australia Pty Ltd* [2014] SALC 55at [76]