

Woolworths Limited [2013] SALC 23

LICENSING COURT OF SOUTH AUSTRALIA

WOOLWORTHS LIMITED

v

MS C RAMSEY, PALS LIQUOR, THE PALMS MAWSON LAKES GOLF CLUB INC AND TOAD PARK PTY LTD t/as MAWSON LAKES HOTEL

JURISDICTION: Application for Retail Liquor Merchants Licence

FILE NO: 5137 of 2012

HEARING DATES: 19, 20, 21 and 22 February 2013

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 4 April 2013

Application for a retail liquor merchant's licence - Applicant unsuccessfully made a similar application several years ago - Whether there has been a material change in circumstances - Held that there has been - Whether the licensed premises that already exist in the vicinity of the proposed facility are adequately catering for the public demand for takeaway liquor - Held that for many within the relevant locality takeaway facilities outside of the locality involve distances and time of travel that are more than mere inconvenience - Held that in light of evidence given here and in previous cases many people would prefer to buy their liquor from a modern bottle shop that is not part of a hotel - Given that many people live in the locality it could be reasonably presumed that a not insignificant number of them would choose not to make their takeaway purchases from the only takeaway facility within the locality being the Mawson Lakes Hotel - 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 - Application granted - Ss 53, 57 and 58 Liquor Licensing Act 1997

Woolworths Liquor Mawson Lakes [2004] SALC 7

Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern (2000) 76 SASR 290

Nepeor v Liquor Licensing Commission (1987) 46 SASR 205

Liquorland (Australia) Pty Ltd v North Adelaide Village Shopping Centre Pty Ltd and Village Cellars (SA) Pty Ltd [2012] SALC 42

Woolworths Limited v Smithfield Hotel Pty Ltd [2012] SALC 57

Lovell and Another v New World Supermarket Pty Ltd (1990) 53 SASR 53

Woolworths Ltd v Drake Coosit Pty Ltd (2010) 106 SASR 146

REPRESENTATION:

Counsel:

Applicant: Mr S Walsh QC with him Mr R D'Aloia

Resident Objector: Ms C Ramsey

Hotel Objector: Mr A Gunn and Mr M Williams

Solicitors:

Applicant: Clelands

Objectors: N/A

- 1 This is an application by Woolworths Limited for a retail liquor merchant's licence in respect of premises to be located at Shop 6, Mawson Central and to be known as BWS (Beer Wine Spirits).
- 2 The application has attracted objections from Ms C Ramsey, PALS Liquor, The Palms Mawson Lakes Golf Club and Toad Park Pty Ltd trading as the Mawson Lakes Hotel.
- 3 Ms Ramsey is a resident of Mawson Lakes and has some concerns about the proximity of the proposed premises to a nearby school. She asked some questions of the applicant's witnesses but otherwise did not actively participate in the hearing.
- 4 PALS Liquor and Palms Mawson Lakes Golf Club Inc did not participate in the hearing.
- 5 The primary objector is the Mawson Lakes Hotel. Through its representative, Mr Gunn, it actively participated in the proceedings and made extensive submissions.
- 6 To succeed in this application Woolworths needs to meet the prerequisites of ss 57 and 58 of the *Liquor Licensing Act 1997*. I would also need to be satisfied, in the exercise of the Court's discretion, that the licence should be granted.¹
- 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 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 Although the section talks of "the locality" it is plain that the enquiry is not strictly limited to a consideration of licensed premises within the locality. It also requires me to consider whether licensed premises outside the boundaries of the locality are adequately meeting the demand within the locality.²

¹ Section 53 of the Act provides the Court with an unqualified discretion to refuse an application if thought appropriate to do so.

² See *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* (2000) 76 SASR 290

A prior application

- 10 In 2003 the applicant made application to this Court for a retail liquor merchant's licence in respect of premises near to the supermarket that it currently operates, not far from the proposed premises here. That application was refused. In refusing that application, Judge Kelly, who was the presiding member of the Court, said:

“It is implicit in the fact of the existence of the hotel licence that there is a sufficiently significant population in the locality worthy of consideration for a grant of the licence sought here. The applicant for the hotel licence had to prove such a significance and must have done so. The licence was granted accordingly. This also means that there must have been then a significant population seeking the range of facilities provided by a hotel and needed by that public. That range included, undoubtedly, a requirement for takeaway liquor. So much was established then it seems to me. There must be, on that reasoning, a significant enough population to justify the grant of a licence for all facets one of which is the need for takeaway liquor in the locality. It follows, it seems to me, that if that particular facet is not being provided or is being provided inadequately then this Court is empowered by Section 58(2) to grant a Retail Liquor Merchant's Licence. Accordingly, in my consideration of this application I am satisfied that I am dealing with a significant enough population to entitle me, all other matters under the section being demonstrated, to grant the licence sought.”³

His Honour then went on to say:

“I am obliged to deal with present demands. I cannot grant licences on the basis of future demands. Perhaps in a year or so or perhaps longer this or another applicant might be able to demonstrate a significant population disadvantaged by the inadequacy of hotel supply. If that be the case then that is the time for the grant of a Retail Liquor Merchant's Licence. Not now as the present evidence stands.”⁴

The applicant's case

- 11 The proposed premises are within a substantial development that is presently being undertaken in the commercial/retail hub of Mawson Lakes. This general area is known as the Promenade and is the relevant town centre. At the present time the applicant operates a large Woolworths Supermarket adjacent to the new development. It intends to vacate those premises and relocate within the new development. The proposed premises are just outside of where the new supermarket will operate.

³ *Woolworths Liquor Mawson Lakes* [2004] SALC 7 (30 April 2004)

⁴ *Woolworths Liquor Mawson Lakes* [2004] SALC 7 (30 April 2004)

- 12 The applicant contended that none of the issues that s 57 deals with arise in this case. It contends that the changes foreshadowed by Judge Kelly have occurred and that the prerequisites for the grant of this licence have now been met.
- 13 The applicant's case comprised of expert evidence from Mr Burns, a planner, two of its executives, Mr Matthew Holland and Mr Anthony Smith and seven "needs" witnesses⁵, Mr Gary Thornhill, Mr Tim Goodes, Mr Jon Cave, Ms Lily Jusup, Mr Eric Feast, Ms Kim Buckley and Ms Margaret Evershed.

The objector's case

- 14 Mawson Lakes Hotel contended that the public's needs for takeaway liquor are being adequately met by itself and by takeaway facilities nearby.
- 15 Mawson Lakes Hotel called evidence from its proprietor, Mr Gunn, Mr Darryl Taylor, one of its bottle shop managers,⁶ as well a number of lay witnesses, Ms Deborah Doris, Mr Wally Karpiuk and Mr Ian Ridings, all of whom gave evidence of their satisfaction with the takeaway facilities that it provides.

Analysis

Section 57

- 16 Mr Holland is Woolworths' senior regional property manager. Ms Ramsey expressed to him her concern about the proximity of the proposed premises to the school, which is just around the corner.
- 17 In response to this Mr Holland said all relevant staff had training in customer service, including, where appropriate, responsible service of alcohol. He said that intoxicated persons would not be served and that if necessary security and ultimately the police would be called to deal with such a situation.
- 18 I have no reason to doubt that this will occur. The applicant holds many retail liquor merchants licences in this State. It has a significant financial investment underpinning its need to comply with the obligations that the Act and the conditions of the licences it holds impose.
- 19 Moreover, there are other licensed facilities, such as cafes and restaurants in relatively close proximity to the school. The Mawson Lakes Hotel is not that far from it. There is nothing before me that suggests that any of

⁵ These are lay witnesses living within the locality who gave evidence concerning their takeaway liquor needs and their preferred method of meeting those needs.

⁶ Exhibit A2 at p5

these facilities are causing a problem for nearby workers, residents and worshippers or that they are prejudicing the safety or welfare of children attending the nearby kindergarten and school. There is no reason to think that if this application is granted the proposed premises will be any different, in terms of causing problems, than the existing licensed facilities and I so find.

- 20 Mr Smith is Woolworths' business manager for licensing. He was asked about the proposed premises. He said:

“Its proposed total area would be 190 square metres, with a trading area of 141 square metres. It's going to have a cool room ... The cool room will be 38 square metres - and a storeroom of 11 square metres, and that makes up 190.”⁷

- 21 He said that he expected the proposed premises to carry about 1500 lines, with an overall stock level of around 30-40,000. He said that it was intended for part of the supermarket storage area to be used for storing stock, if needed.
- 22 What is proposed appears to be an attractive takeaway liquor facility. I find that it will be of a sufficient standard for the purpose of carrying on the business of a retail liquor merchant.
- 23 It would appear that appropriate approvals, consents and the like, pertaining to the proposed premises have been granted.

The locality

- 24 Often in applications such as this the identification of the relevant locality is an important issue, and that is the case here. I set out as an annexure a map of the general locality taken from a planning report tendered by Woolworths.⁸
- 25 It is clear that Mawson Lakes is a unique environment which commenced major development in the 1990s.
- 26 Mr Burns, described it as follows:

“Located on a 600 hectare site of land which previously formed part of what was described in the early 1990s as a Multi-function Polis, Mawson Lakes is now a thriving, mixed use community of almost 12,000 permanent residents located approximately 12 kilometres from Adelaide CBD. Approximately 189 hectares or 30 per cent of the development site is now dedicated to open space, including lakes and waterways.

⁷ Tr 155

⁸ Exhibit A2

In addition to significant residential development, the Mawson Lakes project area encompasses Technology Park, Mawson Lakes School, Endeavour Secondary College, the Mawson Lakes Campus of the University of South Australia and the Mawson Centre, which conducts adult education classes and contains a library and resource centre. Other community facilities include a 9-hole golf course, over 100 playgrounds, parks and gardens and an aged care facility.”⁹

- 27 In connection with the previous application Judge Kelly cited evidence from the planner who gave evidence in that case which described the then position thus:

“The development of Mawson Lakes is not yet complete. Nevertheless, Mawson Lakes already has a population in the order of 2,595 people in 1,035 dwellings, along with another 187 dwellings currently under construction (as at April 2004). ...

The estimated resident population of Mawson Lakes on completion of the urban development project in 2010 is expected to be 10,000 people, in approximately 4000 dwellings. The resident population of Mawson Lakes will be supplemented by approximately 6000 business people employed at nearby Technology Park, designated commercial areas and in retail and service businesses in the town centre of Mawson Lakes (The Promenade).”¹⁰

- 28 It is apparent that the projected increases in population have occurred.
- 29 Mr Burns also identified that there was much more high density and medium density dwellings than is the norm. He noted that some 40 apartments are currently under construction on the site of the development that includes the proposed premises. He said that the area contains a large number of green areas. He said that as a result of this type of planned community those living there are more likely to:

“...make use of the facilities in the town centre or in the community rather than confining themselves to the house and the quarter acre block, the front yard or the backyard. So the families will go to the shops for a meal or pick up something to eat for that evening's meal, they'll utilise the system of public open space for recreation, for taking the dog for a walk and so forth, that's correct, and that's part of this push for - this term 'vibrancy' is used a lot now, getting people out and about and not stuck in their house, but instead getting them outside and mixing with each other in the wider community is what governments and communities are trying to achieve.”¹¹

⁹ Exhibit A2 at p 5

¹⁰ *Woolworths Liquor Mawson Lakes* [2004] SALC 7 at p 3

¹¹ Tr 21

- 30 He made statistical comparisons of the incomes of those living in Mawson Lakes as compared with Adelaide generally. He noted that it was a relatively affluent area.
- 31 Although the planners who gave evidence before Judge Kelly thought that the relevant locality, for the purposes of the Act, extended beyond the defined limits of Mawson Lakes, Judge Kelly disagreed. He thought that it comprised of what he described as the primary locality “defined by Main North Road, the south western end of Parafield airport, the Salisbury-Adelaide railway line and Montague Road.”¹²
- 32 At that time, areas west of the railway line up to Salisbury Highway and Port Wakefield Road were empty, although as part of the planning for Mawson Lakes it was envisaged that they would, in time, be developed. That development has since occurred. Two discreet areas known as “Shoalhaven” and “The Cascade” are reasonably fully developed and lie between the railway line and Salisbury Highway. A third, known as “The Sanctuary”, lies between Salisbury Highway/Hudson Road to the north and Port Wakefield road to the west.
- 33 Mr Burns contends that these should now be included in the relevant locality. Mr Gunn, from Mawson Lakes Hotel, contended otherwise. He suggested that the railway line to the east of the Shoal Haven and The Cascade areas were sufficiently difficult to cross to constitute the logical barrier.
- 34 Mr Gunn submitted that the locality remains as it did when this matter was determined by this Court in 2004.
- 35 I think that Main North Road to the east and Parafield Airport to the north constitute natural barriers of the type Von Doussa J described in *Napier’s* case.¹³ I accept that arguments could be put that Montague Road to the south and the railway line to the west could legitimately be seen as the southern and western markers.
- 36 However, it is of significance that the areas described as Shoal Haven, The Cascade and The Sanctuary were undeveloped when this matter was dealt with in 2004 and that they are now regarded as part of the Mawson Lakes.
- 37 So too is the uniqueness of this development. Mr Burns described it as:

“...it’s a self-contained community, anchored by a town centre, anchored by facilities, not just retail facilities, offices and other

¹² *Woolworths Liquor Mawson Lakes* [2004] SALC 7 at p 5

¹³ von Doussa J said: “In other cases, particular physical features of the area, such as a river, or some other significant obstruction to the free movement of people, might provide the basis for including or excluding particular areas from consideration in a precise way.” [\(1986\) 46 SASR 205](#) at 215

commercial uses, anchored also by schools, primary, secondary, tertiary, anchored also by high-tech industries in that area of Mawson Lakes known as Technology Park.”¹⁴

- 38 I accept this evidence. I find that the areas described as Shoalhaven, The Cascade and The Sanctuary are part of the Mawson Lakes community. I agree with Mr Burns that the relevant locality is as identified in the annexure depicting Mawson Lakes.

Are the licensed facilities in and about the locality adequately catering for the public demand for liquor for consumption off licensed premises and is the licence necessary to satisfy that demand?

- 39 Mr Gunn identified four facilities outside of the locality that might reasonably be expected to meet the takeaway liquor needs of those living within it. These were: BWS Pooraka, PALS Liquor, Liquorland Parafield Gardens and the Cross Keys Hotel.

- 40 Shortly after the hearing commenced we went on a view and inspected the proposed facility, the Mawson Lakes Hotel, Mawson Lakes generally as well as the facilities outside of the locality that were identified as relevant by Mr Gunn. I shall return to this shortly.

- 41 I now turn to discuss the evidence of the various witnesses that deal with the issue of demand.

- 42 Mr Holland’s duties include monitoring the performance of Woolworths’ stores. He said that a large percentage of the customers using the existing Woolworths store at Mawson Lakes come from within that locality. He said that the existing store is about 2600 square metres in area. He said that the new store will occupy 4200 square metres. He said that the new store was necessary because the existing store is not meeting the demand.

- 43 He was asked about shopping trends. He said:

“People are becoming more and more time-poor and, as such, they are shopping more regularly in our stores, so they’re not going – they’re still doing a large, potential, weekly shop, with their \$250 worth of family groceries, but what we’re seeing more and more is smaller shops multiple times in a week, to grab fresh produce especially, everybody is so much more aware now of fresh produce, and there are so many more products on the market than there was 10 years ago. So, we’re seeing customers coming to our stores more and more a week.”¹⁵

¹⁴ Tr 18

¹⁵ Tr139-40

44 Mr Gunn asked Mr Holland how the proposed BWS store would satisfy the alleged inadequacies of the Mawson Lakes Hotel. He said:

“...we believe that the provision of a bottle shop in the shopping centre will cater for people’s needs significantly better than the Mawson Lakes Hotel. People will be able to do their shopping, pick up their groceries, bottle of wine and continue on with their business.”¹⁶

45 Mr Smith was involved in the earlier unsuccessful application. He explained why the within application was being made. He said:

“...back in 2004, and the population at the time was, I think it was, 2600, we go forward nine years and it’s now 12,000, clearly, there’s a – there’s a need to make an application.”¹⁷

46 Mr Gunn asked Mr Smith why he regarded the Mawson Lakes Hotel as inadequate. He said:

“I can honestly say I can’t think of any locality, or whatever you want to call it, neighbourhood, in Australia that has one packaged-liquor offer, shall we call them, that’s servicing 12,000 people.”¹⁸

47 Mr Thornhill is a 59 year old man who runs a transport livestock business. He has lived with his partner in Mawson Lakes for 12 years and has witnessed its steady growth. He said that he and his partner shop up to about four times a week. He said that he and his partner both enjoy alcohol. He said that he services their needs through PALS liquor. He said that this involves a 10 kilometre round trip. He was asked by Mr Gunn how long that journey would take. He said:

“... probably by the time you leave and get back you’re – three-quarters of an hour probably, by the time you muck around and look around.”¹⁹

48 He does not buy takeaway liquor from the Mawson Lakes Hotel.

49 When asked about the proposed facility he said:

“It would save a lot of time to be able to do all your shopping in one spot. Yes, it would be most convenient”²⁰

50 Mr Goodes is a public servant. He also provided evidence in connection with the earlier application. He presently shops at Woolworths Mawson

¹⁶ Tr 154

¹⁷ Tr 154

¹⁸ Tr 169

¹⁹ Tr 67

²⁰ Tr 63

Lakes. He goes there about three times a week. Sometimes he walks, other times he drives. He and his wife enjoy alcohol. They drink wine, beer and some spirits. At the moment they generally service those needs from the BWS store at Pooraka. He said he thought it had a good range and their prices were good. He said that he generally does not use the takeaway facility at the Mawson Lakes Hotel. He said he saw it as a drive through facility that he was not attracted to. When asked about the proposed premises and his liquor purchases he said:

“I’d get it when I went to do the shopping at Woolworths, yes. It would be one trip out and I’d have my trolley and chuck it in there and wheel it back to the car.”²¹

- 51 Mr Cave is a public servant. He has lived at Mawson Lakes for 12 years. He shops at Woolworths Mawson Lakes up to four times a week. He drinks beer, red and white wine, and rum. His wife drinks champagne. He presently services most of his takeaway liquor needs from PALS. He said that it can take him about 20 to 30 minutes to get alcohol from PALS in peak hour traffic. He only uses the takeaway facility at the Mawson Lakes Hotel when he needs a single bottle and does not want to drive out of the locality. He said that he occasionally uses the BWS at Pooraka but he finds it difficult to get to. He said:

“I’ll pop over there, but again, that’s murder getting get out on Montague Farm, but again, it’s that effort of going and especially if you’re tired, you’ve been to the gym or the traffic is heavy or something, you couldn’t be bothered driving that far.”²²

- 52 He spoke of what he saw as the difference between the proposed premises and the takeaway facility at the Mawson Lakes Hotel:

“...if you go into a BWS or something similar it’s laid out better, there’s more room to move around and you’ve got time to browse, whereas with the pub it’s a long thin set-up; you get half a dozen people in there you’re kind of bumping shoulders and there’s no real, sort of, stand back and have a think about it and you’re also under the pressure because the drive-through is usually really chockers with cars again.”²³

- 53 Ms Jusup is a 39 year old married woman who lives with her husband and three young children. She has lived in Mawson Lakes for about six years. She shops at Woolworths Mawson Lakes every day. She entertains fortnightly and will buy liquor in connection with that. She also buys wine to take with her on occasions when she visits friends.

²¹ Tr 74

²² Tr 89

²³ Tr 85

- 54 She expressed her preference for a stand-alone bottles shop as opposed to a drive through. She said:

“No, I prefer to go to a stand-alone. I prefer to take my time to look around the shop and to browse. If I was going through a bottle-o I find car parking is hard. You sort of tend to be pushed through at a bottle-o and it’s not convenient.”²⁴

- 55 At present she buys her takeaway liquor from a bottle shop in the Ingle Farm Shopping Centre. She visits that shopping centre to buy fresh fruit and vegetables. She spoke of her preference to do a single shop at Mawson Lakes to service all of her shopping needs, including liquor.

- 56 Mr Feast is a 20 year old student who has lived at Mawson Lakes for just over a year. He does not own a car. He shops at Woolworths Mawson Lakes about three times a week. He said that apart from travelling to the city he does not usually travel anywhere besides Mawson Lakes because it is too difficult without a car. He buys beer from the Mawson Lakes Hotel. He said that if he bought spirits he would buy it from the city. He would travel to the city by rail. If he purchased liquor near to the Railway Station it would presumably be from the Thirsty Camel outlet in the arcade running south from North Terrace. The Mawson Lakes Hotel also trades under the Thirsty Camel badge. It makes no sense for Mr Feast to find it necessary to make his spirits purchases from the city as opposed to the hotel because of issues of price. He seemed to suggest that it was because of his preference to purchase from a stand-alone facility rather than a drive through.

- 57 Ms Buckley is a 29 year old women living with her parents and younger siblings in Mawson Lakes. She shops at Woolworths Mawson Lakes about three or four times a week. She occasionally buys liquor, rosé, moscato, red wine and sometimes champagne.

- 58 She said that she usually buys liquor from PALS. She said that she rarely uses the Mawson Lakes Hotel. She only goes there when she is “... too lazy to drive down to PALS or I just want to pop in and pop out and get everything done as quick as possible”.²⁵ She said that it can take her between 10 to 15 minutes to drive to PALS.

- 59 She explained why she had issues with the takeaway facility at the Mawson Lakes Hotel. She said:

“...when you get into the drive through area you can sometimes get stuck there because it’s pretty full and people are either still browsing or they’re still waiting in the express lane. When you go

²⁴ Tr 97

²⁵ Tr 114

into the store it's not very - it doesn't have a good flow to it, it seems very poky in there and it's not – it's not well laid out.”²⁶

60 She expressed a preference to make her liquor purchases from a stand-alone bottle shop.

61 In relation to this application she said:

“I think that having the BWS next to the Woolworths will be more convenient for me when I do my shopping, so I can just pop into the Woolworths and if I decide that I'd like something to drink later that night I can just pop into BWS and grab everything all at the same time.”²⁷

62 Ms Evershed has lived at Mawson Lakes for 14 years. She lives with her husband. Both are retired. She shops at Woolworths Mawson Lakes every day. She enjoys beer, wine and spirits. She presently makes her takeaway liquor purchases from a BWS store at Parafield Gardens, which is attached to the Slug n' Lettuce Hotel. She does so because she regularly swims at a swimming centre at Parafield Gardens that is near to the hotel.

63 She said that she likes to buy liquor from stand-alone bottle shops so that she can browse and take her time.

64 She spoke of issues that she had with the takeaway facility at the Mawson Lakes Hotel. She said:

“Well, it's a drive through and I don't like the drive through. I feel when I go to - this is just me, when I go through the Mawson Lakes Hotel and if I park my car there which I used to do, go in there and look for my wine that I want, I felt as if I was, 'Hurry up', 'Hurry up', 'Hurry up', because I felt there was a lot of males that was coming in there buying their beer and going off and if my car was in the road, 'When are you shifting your car?' And it's like - it made me feel I shouldn't be there. So I don't go there.”²⁸

65 She said that she did not purchase liquor from PALS because it was too hard and inconvenient to get there.

66 She was asked how she felt about this application. She said:

“Very strongly about because I do my shopping at Mawson Lakes, I've lived at Mawson Lakes for 14 years, I don't shop anywhere else so why - and the only reason I go to BWS at Slug 'N Lettuce is because it's next to where I swim. Right. And if I don't want to go

²⁶ Tr 114-5

²⁷ Tr 115

²⁸ Tr 123-4

swimming - well, which I have, if I hurt myself and I don't go swimming, where would I go? I'd go to Woolies and that's where I'd stay."²⁹

67 Mr Karpiuk has lived at Mawson Lakes for about 6 years. He lives there with his wife and their 23-year-old son. He said he shops at Woolworths Mawson Lakes every day. He spoke of difficulties finding a park in and around the shopping centre.

68 He said that he services his takeaway liquor needs from the Mawson Lakes Hotel. He said he uses it once a week. He said that he normally buys cartons of beer and his wife buys bottles of champagne, red wine and scotch. He said that he was very comfortable with the variety that the hotel offers and has not experienced any difficulty in terms of convenience or finding what he wanted.

69 He said that he does not like stand alone bottle shops. He said:

"I know why I'm here but, I must admit, I don't go to bottle shops. I find it's far easier to go into a drive-through. I use it at Mawson Lakes and I used to use the drive-through when we lived at Collinswood - same scenario."³⁰

70 Ms Doris has lived at Mawson Lakes for about sixteen months. She spoke of issues with parking around the shopping centre. She enjoys alcohol. She buys takeaway wines, beer and the occasional bottles of spirits. She buys this about once a week, normally from the Mawson Lakes Hotel. She said that she found both the walk-in bottle shop and the drive through facility convenient.

71 She was asked whether she would you prefer to purchase liquor at the same time she bought her groceries. She said:

"Not necessarily. I pretty much shop most days, I do the odd little bits and pieces, so, no, I wouldn't be specifically buying alcohol at the same time."³¹

72 Mr Ridings has lived at Mawson Lakes for nearly seven years. He is semi retired. He lives with his wife. They regularly go to the shopping centre. He spoke of parking difficulties there. He drinks beer and white wine. His wife drinks spirits. He purchases takeaway liquor from the Mawson Lakes Hotel bottle shop about once a week. He said that he finds it convenient.

²⁹ Tr 125

³⁰ 172-3

³¹ Tr 177

73 Mr Taylor is the assistant bottle shop manager at the Mawson Lakes Hotel. He has been in the hospitality industry for 26 years and has worked in up to 40 bottle shops. He described the takeaway facilities at the hotel. He said:

“People can pull in; ask for a carton of beer, three bottles of wine, a bag of ice. We take it to the car, put it in their boot, they don’t even have to get out of the car, they use the EFTPOS. Other people, who like to come and browse, browse, but you’ve got the best of both worlds.”³²

74 He said that 50 per cent of the customers were women and that he was not aware of them having any issues with the facility.

75 He described Thirsty Camel as being one of the better franchises that he had worked for.

76 He said that in his time in the industry he had never heard of drive through hotel bottle shops being an issue for some people.

77 Mr Gunn is a qualified chartered accountant. He has been directly involved in the hospitality industry since 1996. He acquired the lease of the Mawson Lakes Hotel in 2002, before it was built and was quite heavily involved in its actual construction.

78 In the earlier decision Judge Kelly had this to say about the Mawson Lakes Hotel bottle shop:

“It certainly is small and fairly cramped but not so as to cause me to find inadequacy. The parking arrangements are not great. There is no separate entrance. I do wonder why hoteliers or their advisers do not embrace the idea of having an entrance outside the drive through area but in this case the lack of same does not mean that the hotel is not meeting contemporary demand. Whilst I have this entire in mind I do not find an inadequacy in terms of the section. Rather it is the range available which, I believe, has the potential at least to lead to a finding of inadequacy.”³³

79 Mr Gunn said that subsequent to this decision changes had been made to the takeaway facility. I asked Mr Gunn to describe any changes to this facility that had taken place since then. He told me that the hotel itself, the car park and the express and the driveway next to the takeaway outlet were the same as they were in 2004. The drive though as it did before, comprises of one express lane and another browse lane, where motorists can park their vehicles and go inside the bottle shop to select their purchases. He said that he had extended the northern wall of the bottle

³² Tr 181-2

³³ *Woolworths Liquor Mawson Lakes* [2004] SALC 7 at p 6

shop. He said that a cabinet was now in that area and that it contains expensive whiskeys and other spirits. He said that this was put in there to counter a number of “grab and runs”. He said that to the south of the bottle shop a stairwell had been converted into a premium wine area. He said that its dimensions were about one and a half to two metres wide and about ten metres long.

- 80 Mr Gunn conceded that in 2004 the bottle shop was running at a loss. He was unable to say that it was presently running at a profit. This is in contrast to the other aspects of the hotel’s operations, gaming, meals and accommodation, all of which are doing very well.
- 81 I now return to my discussion of the Mawson Lakes Hotel and the four facilities outside of the locality as identified by Mr Gunn.
- 82 On the basis of the evidence and the view that was undertaken, my overall impression is that the Mawson Lakes Hotel contains a fair average quality hotel takeaway facility.
- 83 At one extreme, some such facilities seem to only encourage takeaway sales from those using motor vehicles and envisage the purchaser knowing exactly what he or she wants such that the transaction is completed in no more than a few minutes. At the other extreme, there are some hotel takeaway facilities that positively encourage browse purchases, providing customers with ample parking and in some cases dedicated doorways separate from the drive by service area.
- 84 I would place the Mawson Lakes Hotel takeaway facility at somewhere between these two extremes, closer to the latter than the former.
- 85 There was much debate about the range of liquor available at the hotel. My impression was that it was generally adequate although those looking for premium products or a wider range might need to look elsewhere.
- 86 The BWS Pooraka is situated in a small shopping centre. It is just over 2.5 kilometres from the centre of Mawson Lakes. For those living there, it involves either travelling up to Elder Smith Road, turning right into Main North Road and then left into Montague Road or travelling down to Mawson Lakes Boulevard, turning left into that street and then right into Main North Road and so on. In *Liquorland (Aust) Pty Ltd* I described BWS stores as having a range more suited to convenience type customers and commented that it would not hold itself out as a boutique liquor outlet.³⁴
- 87 There was nothing that I observed in this case that would cause me to change that view. It is a typical BWS store. Reasonably attractive,

³⁴ [2012] SALC 42 at para 86

reasonably friendly to browse purchasers, and containing a reasonable, albeit not an extensive range of liquor. I expect the proposed premises would be similar.

- 88 PALS Liquor at Parafield is situated next to the Roulettes Tavern on the northern boundary of the Parafield Airport. It is a large establishment. On the eastern side is a large drive in area that comprises of a typical drive through facility. The facility itself is almost in the nature of a large warehouse and contains an extensive range of liquors. The facility has a reasonably large car park outside. It is about 4.5 kilometres from the centre of Mawson Lakes. For those living there, it involves driving east along Elder Smith road and turning left into Main North Road and left again into Kings Road.
- 89 Liquorland Parafield Gardens is situated on the Salisbury Highway about 3.5 kilometres from the centre of Mawson Lakes. It is within a small shopping centre. For those living in the centre of Mawson Lakes it involves travelling west along Elder Smith Road turning right into Salisbury Highway and turning across Salisbury Highway into the shopping centre. The range and layout is typical of a Liquorland store which as I noted in *Liquorland (Aust) Pty Ltd* is not significantly different to the layout of a BWS Store. That said, this store was a little larger than one might normally expect of these branded facilities.
- 90 The Cross Keys Hotel on the Port Wakefield road about 4.5 kilometres from the centre of Mawson Lakes. Those living there would gain access to the Hotel by travelling west along Elder Smith Road and then in a general southerly direction along Salisbury Highway and Port Wakefield Road. The takeaway facility is in the nature of a large warehouse, although not as large as the facility at PALS Liquor. It also has a drive through facility. The facility seemed to have a good range of liquor although not as extensive as PALS Liquor.
- 91 In determining whether the test postulated by s 58(2) has been met, I think, as Mr Walsh QC submitted, the demographics speak for themselves.
- 92 As I observed in *Liquorland (Aust) Pty Ltd* “I am permitted to know that some people do not like purchasing takeaway liquor from a hotel and would prefer to make their purchases from a dedicated retail facility.”³⁵ This is consistent with the observations of Cox J in *Lovell and Another v New World Supermarket Pty Ltd* where he said:

“I think that in recent cases the Court has shown a proper responsiveness to the preference of many people, such as a number

³⁵ *Liquorland (Australia) Pty Ltd v North Adelaide Village Shopping Centre Pty Ltd and Village Cellars (SA) Pty Ltd* [2012] SALC 42

of the witnesses who testified in this case, for buying their liquor from a modern bottle shop that is not part of a hotel.”³⁶

- 93 Given that the population of the locality is about 12,000 people a fair number of these people could be expected to desire to make their takeaway liquor purchases from a facility that is not attached to a hotel.
- 94 The evidence given in this case supports this. I accept Mr Thornhill’s evidence about his preference to do all of his shopping, including liquor, in one spot. I accept Mr Goodes’s evidence about his preference not to use a drive in facility and to buy liquor as part of his supermarket shopping. I accept Mr Cave’s evidence about his preference to buy takeaway liquor from the proposed premises as opposed to the Mawson Lakes Hotel. I accept Ms Jusup’s evidence about her preference to do all of her shopping, including liquor, in one spot. I accept Ms Buckley’s evidence about her preference to make her liquor purchases from a stand alone shop. I accept Ms Evershed’s evidence of her strong preference to make her liquor purchases from a stand-alone shop and not a drive in facility attached to a hotel.³⁷
- 95 Of course, not all people feel that way, as evidenced by the witnesses called by Mr Gunn. I accept their evidence. It is self evident that many people would find it very convenient to make their takeaway liquor purchases from a drive through facility attached to a hotel. Such facilities would not survive if it were otherwise.
- 96 However, given the numbers that now live within Mawson Lakes, it could be reasonably presumed that a not insignificant number of them, choose to make their takeaway purchases at facilities other than the Mawson Lakes Hotel. Some because they are looking for a better range. Some because out of habit or convenience they buy liquor elsewhere. Some, and I find a not insignificant number, because they do not want to make their takeaway liquor purchases from a drive through facility attached to a hotel.
- 97 This is borne out by other evidence. The Mawson Lakes Hotel presently has a monopoly, being the only takeaway facility within the locality. I would have expected a takeaway liquor facility in an affluent area, such as this, that has a population of 12,000 people, that has no competition within the locality, would be doing very well. But that is not the picture that emerges from the evidence of Mr Gunn. His evidence indicates that the bottle department for a time was not making a profit and is not doing especially well now.

³⁶ (1990) 53 SASR 53 at 58

³⁷ I did not find the evidence of Mr Feast to be particularly helpful.

98 It is understandable that the takeaway facility at the Mawson Lakes Hotel might have struggled when the captive population was around 2,500, as it was when this matter was last before the Court. But in light of the very substantial increase in population since then, I think that the only reasonable inference to draw from this is that a significant number of those living within the locality are choosing to meet their takeaway liquor needs from facilities outside of the locality rather than from the Mawson Lakes Hotel.

99 In determining the relevance of these facilities I remind myself of the observations that I made in *Woolworths Limited v Smithfield Hotel Pty Ltd*:

“The observations by von Doussa J in *Nepeor’s* case about distances does not lead to a hard and fast rule that if persons have to travel a round trip of six kilometres or more in a metropolitan area to purchase takeaway liquor it necessarily follows that the existing facilities do not adequately cater for the public demand. But what they do indicate is that where distances of that order or more, are involved, particularly if they involve using or traversing major roads, the point can be reached where the court will be satisfied that what is involved is more than mere inconvenience.”

(footnotes omitted)³⁸

100 Although the takeaway facilities outside of the locality that were identified by Mr Gunn might be convenient to some of the residents of Mawson Lakes, and might be being used by many by choice or without any discontent, they might involve for a number of residents, especially those living in and around the town centre, round trips of six kilometres or more across busy roads. I appreciate that the BWS store at Pooraka is a little closer. But I thought Mr Cave’s evidence about the difficulty in getting there, which evidence I accept, was telling.

101 Having regard to the evidence of considerable high and medium density housing in and around the town centre, which evidence I accept, I find that many people live in this area. In light of the distances and inconvenience involved for many of those living within Mawson Lakes in accessing takeaway liquor facilities outside of the locality, especially for those living in and around the town centre, I find that of those who are doing so because they do not want to make their takeaway liquor purchases from a drive in facility attached to a hotel, some are doing so reluctantly. I find that what is involved for them is “more than the sort of mere inconvenience that is a part of daily life for people in the locality”.³⁹ I think it is likely that the number of people that fall within this category is significant and I so find.

³⁸ [2012] SALC 57 at paras 77-82

³⁹ *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* (2000) 76 SASR 290 at 297-8

- 102 It can also be safely assumed that this, in part, is underpinning the within application. To borrow the words of Kourakis J in *Woolworths Ltd v Drake Coosit Pty Ltd* “an applicant is unlikely to risk the investment of a substantial amount of capital if there were not a significant demand.”⁴⁰
- 103 All of this leads me to conclude that the Mawson Lakes Hotel and the other takeaway licensed facilities, identified by Mr Gunn, do not adequately cater for the relevant public demand for liquor for consumption off licensed premises and that the proposed premises are necessary to satisfy that demand.

Discretion

- 104 I acknowledge that the grant of this application will mean two takeaway liquor facilities within a relatively close proximity. I am aware that this Court has on occasions exercised its discretion in not granting a licence because of concerns about undue proliferation. The close distance between the two facilities is clearly a relevant factor that I must take into account. However, it is of significance that there are differences between the two facilities. One is attached to a hotel. The other will be a stand-alone liquor outlet.
- 105 Another relevant consideration in determining the issue of discretion is clear evidence that has emerged from many cases of “the community’s wish for one-stop shopping”.⁴¹
- 106 I conclude that the public interest does not require the refusal of the application. To the contrary, the grant of this licence is in the public interest. Many of the people living in the locality are using Mawson Central. The addition of a retail liquor facility will further add to the attractiveness of the shopping centre and will meet a growing desire by many to combine their takeaway liquor purchases with their supermarket shopping.

Conclusion

- 107 As will be seen from these reasons the application succeeds. It has succeeded because the applicant has met the legal tests provided for by the relevant provisions of the Act and the Court has determined that in the exercise of its discretion there is no reason why the application should not be granted. It has not succeeded because of any deficiencies in the content or presentation of the objectors’ case. Indeed, I think it is appropriate to acknowledge that Mr Gunn conducted himself in a

⁴⁰ (2010) 106 SASR 146 at 158

⁴¹ *Lovell and Another v New World Supermarket Pty Ltd* (1990) 53 SASR 53 at 58 per Cox J; See also: *Woolworths Ltd v Drake Coosit Pty Ltd* (2010) 106 SASR 146 at 158-9 per Kourakis J

thoughtful and respectful manner and that he produced relevant evidence and made helpful submissions.

108 I would now like to hear from the applicant as to the terms of the order that should now follow.

