

LICENSING COURT OF SOUTH AUSTRALIA

ANGAS PK CELLARS PTY LTD

JURISDICTION: Application for Retail Liquor Merchant's Licence

FILE NO: 299 of 2018

HEARING DATE: 9 May 2018

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 9 May 2018; Reasons published on 14 May 2018

CATCHWORDS

*Application for a Retail Liquor Merchant's Licence - Whether the licensed premises that already exist in the vicinity of the proposed facility are adequately catering for the public demand for take away liquor - **Held** that there was a strong community expectation that a town like Nuriootpa would have amongst its suite of take away liquor facilities a stand-alone bottle shop and that this was sufficient to meet the statutory criteria - **Held** that independently of this there was a strong community expectation that the major shopping complex in which the proposed premises is to be situate would have amongst its offerings a stand-alone bottle shop and that this was also sufficient to meet the statutory criteria - Whether in the exercise of the Court's discretion the application should be refused - **Held** that it is not necessary in the Court's discretion to refuse to grant the licence - Ss, 3, 53, 57 and 58 Liquor Licensing Act 1997.*

Nuriootpa Cellars [2009] SALC 12

Angas Park Cellars [1999] SALC 27

Woolworths Liquor BWS Arndale [2014] SALC 14

Woolworth's v Fassina Investments (2012) 122 SASR 535

Liquorland (Australia) Pty Ltd v Woolworths Ltd and Ors [2018] SASCFC 31

REPRESENTATION:

Counsel:

Applicant: Mr B Doyle with Mr J Ryan

Solicitors:

Applicant: Ryan and Durey Solicitors

- 1 At the conclusion of the hearing of this matter I granted Angas Pk Cellars Pty Ltd, a Retail Liquor Merchant's Licence in respect of proposed premises that are to be situated within the Barossa Co-Op Shopping Centre in Murray Street, Nuriootpa.
- 2 I noted that previous applications for such a licence in Nuriootpa had been refused by this Court in 2009¹ and in 1999.² I noted that circumstances had changed considerably since those cases were decided and that the applicant's case for this licence was overwhelming.
- 3 I was satisfied that the statutory criteria for the granting of such a licence had been met and that there was nothing about the application that warranted the adverse application of the Court's discretion conferred by s 53 of the *Liquor Licensing Act 1997*. To the contrary, I declared that it was very much in the public interest to grant the application.
- 4 These are my reasons for granting the application and making the observations that did.
- 5 The application initially drew objections from Mahelp Pty Ltd, the licensee of the Tanunda Cellars, Tanunda Club Inc and from Nuriootpa Vine Inn Hotel Motel Pty Ltd, the licensee of the Vine Inn, a nearby hotel. All notices of objection were subsequently withdrawn.
- 6 The matter proceeded before me by way of affidavit evidence from the proprietor of Angas Park Cellars, Mr Andrew Plush, which was supplemented by his oral evidence.
- 7 To succeed in this application the applicant needed to satisfy the Court that the pre-requisites of ss 57 and 58 of the Act had been met and that in the exercise of the Court's discretion under s 53 of the Act the licence should be granted.
- 8 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. I was comfortably satisfied that none of these matters were of any concern.
- 9 Section 58(2) requires an applicant for this type of licence must satisfy the Court that:

¹ *Nuriootpa Cellars* [2009] SALC 12.

² *Angas Park Cellars Pty Ltd* [1999] SALC 27.

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.

- 10 The starting point in applications such as these is to find the relevant locality. Nuriootpa is a country town situated 74 km north east of Adelaide and is at the heart of the Barossa wine region. It is one of three major towns in that region, the other two being Tanunda, about seven kilometres to the south, and Angaston, about eight or so kilometres to the south east. The Barossa wine region is a major tourist destination.
- 11 In connection with these towns, in *Angas Park Cellars*, being the 1999 case, this Court noted that Nuriootpa and Tanunda each had populations of approximately 3,500 and that Angaston had a population of about 2,500. It concluded that for the purposes of identifying the relevant locality in connection with the application before it, the whole of the Barossa Valley had to be taken into account.
- 12 The Court came to a similar conclusion ten years later, noting:

Although Tanunda and Angaston have significant facilities and stand alone in their own right, the higher order of facilities at present and planned for the future for Nuriootpa means that this applicant could reasonably expect custom to be drawn from a much bigger area than that put forward by Mr Smith. The ease of movement up, down and around the Barossa Valley Highway, higher than average household income, in combination with a mobile population with very significant numbers linked to the wine industry, are important considerations in my assessment. A retail bottle shop in an expanded regional shopping centre would, in my assessment, attract its custom from the whole region, including Tanunda and Angaston.³

- 13 I saw no reason to depart from the position taken in the previous cases and concluded that the Barossa Valley is the locality for the purposes of this application. Apart for outlets operating under a producer's licence, the only retail take way facility in the locality not attached to a hotel is the Tanunda Cellars. It trades under a retail liquor merchant's licence.
- 14 Evidence adduced in this application reveals that there has been significant population growth in this area over the last fifteen years, most notably in Nuriootpa. The 2016 Census reveals that Nuriootpa has increased from 3,846 in 2001 to 5,691 in 2016. Tanunda has increased from 3,865 to 4,324, and Angaston from 1,930 to 2,044.

³ [2009] SALC 12 at [96].

- 15 It is clear from the population growth experienced in Nuriootpa that it has become the main focus of residential growth in the region and that it has become by some margin, the Barossa's largest town. Consistent with that growth there has been a major redevelopment of the Barossa Co-Op, which is a community owned retail co-operative at 3 Murray Street. Murray Street is the major commercial road in Nuriootpa that connects with Tanunda to the south.
- 16 The Barossa Co-Op was described by this Court in *Angas Park Cellars* as follows:
- The shopping centre is very new. It opened for business on the 2 November 1998. It houses a very large and modern supermarket which is run by the Co-operative itself. Three specialty shops (including the liquor store) have been let. The other specialty businesses consist of a chemist and a café/coffee shop. In addition, nearby but not in the same complex the Co-operative runs a department store, a hardware store, an electrical store and carpet and furnishings store. The Co-operative also leases other specialty shops in the vicinity.⁴
- 17 The Barossa Co-Op has since been greatly expanded. It is anchored by what is now one of the State's largest Foodland Supermarkets. Its tenancies also include an Aldi Supermarket, a Mitre 10 store, a Cheap as Chips store, the Barossa Home Living store, a Better Home Living store, a Smokemart and gift store, an Optus store, a Toyworld store, a post office, a dry cleaner, a chemist, a newsagent, a travel agent, an optician's store, a hearing centre, a sports store, as well as food outlets and clothes shops and a fitness centre. It is a formidable shopping complex.
- 18 The proposed premises will be located in the Barossa Co-Op on the ground floor, with a floor area of 197 square metres. It will have a cool room. It promises to be a well-stocked, attractive facility, intended to showcase wines from the Barossa region, as well as high quality liquor products from a variety of regions.
- 19 The proposed store is across the road from the Vine Inn which has a typical take away liquor facility attached to a country hotel that is mainly in the form of a drive through bottle department. Even without knowing the Vine Inn's range of products I am permitted to know that the range of liquor on offer at the proposed store will be different in significant respects. If it were otherwise, one might have expected the Vine Inn to have maintained its objection.
- 20 The only other retail liquor facility in Nuriootpa is the Angle Park Hotel situated a little further down the road in Murray Street, north of the

⁴ Ibid.

Barossa Co-Op. This is a land locked hotel that only offers across the bar take away liquor. It has no existing capacity or foreseeable potential to offer a better take away facility.

- 21 The Full Court *Woolworths v Fassina Investments*⁵ expressly denounced the proposition expressed in this Court that just because there was a community expectation that a shopping precinct might be expected to house a bottle shop was not enough to establish that the licensed premises already existing in the locality are not adequately catering for the public demand for liquor for consumption off licensed premises.⁶ To the contrary, it held that “this consideration is of particular importance”.⁷ It said that irrespective of the accessibility of existing outlets in the locality, considerable weight had to be given to contemporary social and work patterns and in that context a community expectation that a centre such as Arndale would include a retail liquor store was a very significant factor.⁸
- 22 Albeit in dissent, in the very recent case of *Liquorland (Australia) Pty Ltd v Woolworths Ltd and Ors*, Kourakis CJ observed that this Court, as a specialist court, is able to rely upon its own knowledge and experience, in determining the community standard which underlies the statutory test of adequately catering for public demand.⁹ Although the learned Chief Justice was in dissent, these remarks were not inconsistent with the view expressed by the majority in that case.
- 23 I am permitted to know that with its current population Nuriootpa has grown to now be one of the larger country towns in this State. Evidence was placed before the Court that indicated that the country towns of Barmera, Berri, Clare, Goolwa, Loxton, and Renmark are of comparable size to Nuriootpa and that each have within their suite of retail take away liquor facilities, a stand-alone facility trading under a retail liquor merchant’s licence
- 24 I found that the community living in the Barossa region would expect a town like Nuriootpa, which is the biggest in the region, and which has become its retail hub, to have a stand-alone bottle shop trading under a retail liquor merchant’s licence.
- 25 That of itself satisfied me that the statutory test of not adequately catering for public demand had been met. The fact that there is a retail liquor facility trading under a retail liquor merchant’s licence elsewhere

⁵ (2012) 122 SASR 535.

⁶ *Woolworths Liquor BWS Arndale* [2014] SALC 14 at [116].

⁷ (2012) 122 SASR 535 at [54].

⁸ *Ibid* at [54]-[55].

⁹ [2018] SASCF 31 at [8].

in the region, being the Tanunda Cellars in Tanunda, some seven kilometers to the south, was to my mind of no consequence.

- 26 In addition to this, there was evidence of a public, presently using the Barossa Co-Op, enthusiastically looking forward to being able to combine their take away liquor purchasing with their use of the many facilities on offer there. It also established that people from far and wide, all over the Barossa Valley, use the Barossa Co-Op. As at January 2018 it has over 18,000 members. It has a trade catchment of over 37,000 persons. The Barossa Co-Op is plainly the major retail centre for the Barossa Valley. I found that there would be a very strong expectation by the community living in the region that it would have amongst its offerings a stand-alone retail shop trading under a retail liquor merchant's licence. I did not find it necessary to give much consideration to the take away liquor facilities in the region. To borrow the words of Parker J in *Woolworths v Fassina Investments*, regardless of the accessibility of existing outlets in the region, having regard to contemporary social and work patterns and the significance of the Barossa Co-Op in that context, this expectation independently satisfied me that the statutory test of not adequately catering for public demand had been met.
- 27 There was no basis to refuse the application on public policy grounds. Although there is a retail take away facility nearby, it is a different offering. Even with the addition of another facility, the overall number of take away liquor facilities in Nuriootpa, which will now number three, is modest compared with some country towns. I had no concerns about undue proliferation of take away facilities.
- 28 I formed the view that the grant of this licence was in the public interest. It seemed to me that it would further the interests of the liquor industry and industries with which it is closely associated, such as tourism¹⁰. I considered that it would be consistent with the liquor industry developing in a way that is consistent with the needs and aspirations of the community.¹¹ Finally, I believed that the grant of the licence would encourage a competitive market for the supply of liquor.¹²

¹⁰ See s 3(1)(b) of the Act.

¹¹ See s 3(1)(c) of the Act.

¹² See s 3(1)(e) of the Act.