

Liquorland [2011] SALC 27

LICENSING COURT OF SOUTH AUSTRALIA

LIQUORLAND

JURISDICTION: Application for the removal of the retail liquor merchant's licence

FILE NO: 680 of 2011

HEARING DATES: 22, 23, and 24 March 2011

JUDGMENT OF: His Honour Judge B Gilchrist

DELIVERED ON: 8 April 2011

Application for the removal of the retail liquor merchant's licence - Proposed transfer of a suspended licence in respect of premises previously conducted under the trade name Liquorland at the corner of Gouger Street and West Terrace, Adelaide to much smaller premises at 210 Hutt Street, Adelaide - New premises to be "Vintage Cellars" - Two issues - One is locality, the second is whether the Court is satisfied that to grant the application would not be contrary to the public interest - Meaning of the word locality considered and discussed - Held that the relevant locality is the area within the City of Adelaide that has boundaries to the east, south and west fixed by the relevant Terraces and to the north by the River Torrens - Factors relevant to the issue of discretion considered and discussed - Held that the public interest does not require the refusal of the application - Ss 3, 53 and 61 Liquor Licensing Act 1997

Liquorland v Hurley's Arkaba Hotel and Others [2001] SASC 232

D'Oro Distributors Pty Ltd v The Superintendent of Licensed Premises and Kiley [1968] SASR 220

East Gambier Sportsmen Club Inc (1975-6) SALCR 46

Grenfell Tavern Pty Ltd (1975-6) SALCR 178

Jackpot on Flinders [2006] SALC 18

Nepeor v Liquor Licensing Commission (1987) 46 SASR 205

Liquorland (Australia) Pty Ltd v Lindsey Cove Pty Ltd [2002] SAFC 17

REPRESENTATION:

Counsel:

Applicant:

Mr M Roder SC

For the Hotel Objectors:

Mr J Firth

For the Adelaide City Council:

Mr B Allen

For Resident/Small Business Objectors:

Mr R Abbott

Solicitors:

Applicant:

Hunt and Hunt Lawyers

For the Hotel Objector:

Clelands Lawyers

For the Adelaide City Council:

Wallmans

For Resident/Small Business Objectors:

N/A

- 1 This is an application for the removal of a retail liquor merchant's licence pursuant to the *Liquor Licensing Act 1997*.
- 2 The applicant is Liquorland Australia Pty Ltd.
- 3 The application involves the proposed transfer of a suspended licence in respect of premises previously conducted under the trade name "Liquorland" at the corner of Gouger Street and West Terrace, Adelaide to much smaller premises at 210 Hutt Street, Adelaide. It is proposed that the new premises will trade under the name "Vintage Cellars".
- 4 The application involves two issues.
- 5 The first concerns the concept "locality".
- 6 The second concerns the exercise of the discretion that the Court possesses, which enables it to grant or refuse an application and which requires it to refuse an application if it is "satisfied that to grant the application would be contrary to the public interest".¹

Locality

- 7 A consideration of the concept of locality arises because of s 61(2) of the Act and the manner in which that provision has been construed.
- 8 Ordinarily an application for the removal of a retail liquor licence carries with it an obligation to establish that the licensed premises already existing within the locality do not adequately cater for the public's demands. In *Liquorland v Hurley's Arkaba Hotel and Others*² it was held that this requirement does not apply if the licence is being removed within the same locality. Or, to put it another way, if the proposed licensed premises are in the same locality as the existing licensed premises proof of need is not required.
- 9 Pinning down a meaning to be given to the word "locality" as it appears in the Act is a futile exercise. The cases make it clear that it is a flexible word and its meaning can vary from case to case. In *D'Oro Distributers Pty Ltd v The Superintendent of Licensed Premises and Kiley*, Bray CJ said:

“...the authorities show that phrases like ... ‘locality’ in licensing legislation of this sort have received a fairly flexible and varying interpretation according to the type of licence sought and the nature of the business proposed to be carried on. Thus it has been held in Tasmania that for the purpose of a proposal to erect a first class

¹ S 53(1) and (1a) of the Act

² [2001] SASC 232

Hotel at Wrest Point the whole of Hobart could be considered as one locality; and that for the purpose of a club licence the locality meant all those who would be concerned as club members or potential club members or persons affected or potentially affected by the existence of the club; and that in the case of a country hotel the area in fact served by it was to be regarded. It would appear that in the case of a hotel serving the tourist trade phrases like ‘the convenience of the public’ and ‘the requirements of the locality’ can be extended to a wide area, for example, the whole of New Zealand.”³ (footnotes omitted)

- 10 In conformity with this, the word has been given the breadth to include whole towns, like Mount Gambier, in the context of a sporting club licence.⁴ And it has been construed as narrowly as to support a street-by-street approach, in the context of an application for full publican’s licence in the City of Adelaide.⁵
- 11 In this case the applicant contends that the locality for the purposes of this application comprises of the whole of the area of Adelaide bordered by the four Terraces. As the transfer from the existing premises to the proposed premises is within this area it contends that the issue of need does not arise.
- 12 In the alternative, it submits that if that area is regarded as too great it might be considered that the relevant locality was that area of Adelaide south of Victoria Square extending to the west to West Terrace, to the south to South Terrace, and to the east to East Terrace. Again, it contends that in that event the transfer is within the same locality.
- 13 In support of this contention the applicant relies upon the evidence of its State manager, Mr Ellyard. Mr Ellyard worked from the premises occupied by Gouger Street store and he worked in the store for a few hours each week.
- 14 Mr Ellyard said that the Gouger Street store ceased trading in January 2009. He said that it contained about 18 or so car parks and that it was accessible from both West Terrace and Gouger Street. He said that most customers came to the store by car. Most were passing trade. But some of the customers were local in the sense of making their purchases for consumption in the city⁶. He said that the Gouger Street store catered for a lot of businesses and restaurants and that he regarded the relevant trade area as within the four Terraces of the city.

³ *D’Oro v Superintendent* [1968] SASR 220 at 226-7

⁴ See *East Gambier Sportsmen Club Inc* (1975-6) SALCR 46

⁵ See *Grenfell Tavern Pty Ltd* (1975-6) SALCR 178

⁶ Hereinafter when I use the word “city” I refer to the area within East, South and West Terraces and to the north, south of the River Torrens

- 15 Mr Ellyard is employed by the applicant and obviously has an interest in the application succeeding. But that said, I thought he was a careful and thoughtful witness. He was ready to make concessions that did not help the applicant's case, such as that in connection with the substantial passing trade that the Gouger Street store enjoyed, and I formed a favourable impression of his credibility.
- 16 The applicant also relied upon the expert evidence of Mr Jeff Smith, a planning consultant.
- 17 He described the geographical features of the city. He noted that it is separated from the surrounding suburbs by a significant parkland belt and that the area south of the River Torrens is quite distinct from the area north of it, North Adelaide, and that even though they are within the same council area they are distinct entities. He noted that the city is divided north/south by Grote and Wakefield Streets and east/west by King William Street. He noted that the area north of Grote and Wakefield Streets was predominantly commercial/business while the area to the south was predominantly residential. None of this is controversial.
- 18 He said that there were six retail merchant's licences within the city area. He identified these as a Sip'n Save facility attached to the drive in bottle department of the Elephant and Castle, a busy hotel on the corner of Gilbert Street and West Terrace, a few blocks south of the Gouger Street store; Cellarbrations, which although attached to the Strathmore Hotel in North Terrace, operates out of a retail outlet in an arcade off Bank Street, just west of the corner of North Terrace and King William Street; Hutt Street Cellars, which although attached to the Arab Steed Hotel in Hutt Street operates out of premises adjacent to but physically separate from the Hotel; BWS, a retail outlet in Gilbert Street, just west of the junction with King William Street; Vintage Cellars, a retail outlet operating within the Central Market; Woolworth's Liquor, a retail outlet operating within the Woolworth's Store in Rundle Mall, and East End Cellars, which is situated in Vardon Street, a small laneway running off the west of East Terrace into the south of Rundle Street East, not far from the junction of Rundle Street East and East Terrace. It was put to me that two other outlets were also relevant, being takeaway wine facilities attached to The Bar on Gouger and The Wine Underground in Pirie Street. I am permitted to know that there is also a facility in the basement of David Jones between Rundle Mall and North Terrace.
- 19 Mr Smith expressed the opinion that the whole of the city was a single locality. He said that it could possibly be further divided into a northern CBD sector and a southern residential sector.

- 20 The Hotel objectors contend that this approach is wrong. Through their expert, Mr Brad Burns, they contend that an appropriate way to identify the relevant locality is to focus upon the distance over which the public might reasonably be expected to travel to the existing premises, which they assert is quite limited. Mr Burns suggested that the relevant locality was within a radius of the Gouger Street store that does not extend to the east beyond King William Street.
- 21 Mr Burns fortified this view with his contention that King William Street, particularly in light of the enhanced tramline facilities that now extend to North Terrace, constitutes a physical barrier that lends itself to the identification of the relevant locality.
- 22 This later proposition no doubt reflects certain observations made by von Doussa J in *Nepeor v Liquor Licensing Commission*. In that case, von Doussa J, in making some general observations about the meaning of the word “locality”, 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.”⁷
- 23 That decision was applied by the Licensing Court in *Jackpots on Flinders*, a case concerning the proposed removal of a hotel licence from premises at 57 Flinders Street to premises at 111 King William Street. The expert, whose evidence was preferred in that case, had expressed the view that the relevant boundary of the locality was King William Street.⁸
- 24 Whilst there are some helpful general observations in the *Jackpot’s case* it cannot and does not stand for the general proposition that in determining locality within the city, King William Street is always to be regarded as a natural barrier.
- 25 In the end, what is required is a determination as to what was the locality of the existing premises, the Gouger Street store. That in turn requires a consideration of the physical locality of the patrons within the city, excluding passing trade, which might have been expected to use that facility.
- 26 It has to be accepted that King William Street presents a not insignificant bar to pedestrian traffic. But Mr Ellyard said that a significant proportion of the customers that accessed the Gouger Street store did so by vehicle. That reflects commonsense. Patrons purchasing more than two bottles of wine or spirits or more than a six pack of beer could reasonably be

⁷ (1987) 46 SASR 205 at 215

⁸ *Jackpot on Flinders* [2006] SALC 18

expected to make their purchases through the convenience of a motor vehicle.

- 27 In determining what the locality is, I think it is appropriate for me to rely upon my knowledge of the city. I am permitted to know that for residents and occupiers of offices along the southern side of North Terrace, west of Pultney Street, access to the southeast corner of the city by car is not a straightforward exercise. I am permitted to know that for those members of the public driving a motor vehicle for the purpose of purchasing say a carton of beer or a few bottles of wine might find it convenient to drive west along North Terrace and turn left into West Terrace and make the purchase from the Gouger Street store and proceed to make a round trip travelling east across the city and turning left into Pultney Street.
- 28 I appreciate that there is a bottle shop in the arcade near Bank Street. However, I am permitted to know that parking in the vicinity of this facility is difficult and that the more expansive parking facilities available at Gouger Street store might make it a more attractive option.
- 29 I appreciate that there are two retail outlets in the Rundle Mall, but they cannot be readily accessed by a motor vehicle. I am permitted to know that if orders of more than one or two bottles of wine or of a carton of beer were made from these outlets these would probably require a delivery from the store.
- 30 I am permitted to know that motor vehicles moving from the southern side of Grenfell Street, west of Pultney Street, may also have difficulty in accessing the east of Adelaide and again, in attending to their liquor needs, it might be convenient for them to travel across King William Street turning left into West Terrace again to access the Gouger Street store.
- 31 There is no physical barrier to motor vehicles moving from the southern side of Pirie Street but the relevant proximity of a facility in West Terrace, as opposed to the premises in the east, might make the Gouger Street store just as attractive.
- 32 I am permitted to know that for streets running from west to east further south of Pirie Street, notwithstanding the presence of the tram, motor vehicle access across King William Street is not that difficult.
- 33 For all of these reasons I reject the hypothesis that in determining the locality in this case King William Street should be regarded as a barrier that provides the basis for including or excluding particular parts of the city.
- 34 I find that people who worked and lived all over the city used the Gouger Street store including some who worked or lived east of King William

Street and north of Grote and Wakefield Streets. I find that not all of their purchases constituted passing trade. This accords with the evidence of Mr Ellyard, who as I said earlier, thought that its market comprised of the whole of the city. I accept this evidence. I find that the relevant locality of the Gouger Street store is that area within the City of Adelaide that has boundaries to the east, south and west fixed by the relevant Terraces and to the north by the River Torrens.

- 35 As the proposed premises are within the same locality subject to the issue of discretion the application should be granted.

Discretion

- 36 I now turn to the issue of discretion. All of the objectors urged me to exercise my discretion to refuse the application.

- 37 Before this can be considered I need to make some observations about the law, the proposed store, and some other matters.

- 38 In *Liquorland (Australia) Pty Ltd v Lindsey Cove Pty Ltd* the Full Court said:

“In short, the discretion must be exercised for a purpose consistent with the Act, or which the Court in its experience finds appropriate or necessary in the proper application of the Act. On the other hand, the Court must be careful not to use the discretion as a basis for imposing views about what is desirable, unless those views are firmly linked to the principles on which the Act operates or is administered.”⁹

- 39 It is notable that within the objects clause, s 3(1) of the Act refers expressly to the “sale, supply and consumption of liquor for the benefit of the community as a whole”.

- 40 To this I add the observations of Perry J in *Liquorland (Aust) v Hurley’s Arkaba Hotel and Others* where he said:

“Authorities which emphasise the breadth of the discretion exercisable by the Licensing Court in the context of the precursors to s 53 of the present Act are of equal application. The discretion is ‘the widest of possible discretions’, although it is doubtful that it might properly be used to enable a grant to be made if specific criteria for such a grant, to be found elsewhere in the Act, are not met. That is not the case here.

It should be noted that a most important change appears in s 53, in comparison with its predecessors. Section 53(1) provides that the licensing authority ‘... is not to take into account an economic effect on other licensees in the locality affected by the application’.

⁹ [2002] SAFC 17 at para 28

That provision should be read together with s 3(e), which enumerates as one of the objects of the 1997 Act ‘to encourage a competitive market for the supply of liquor’.

In the result, it was incumbent upon the court to approach the matter with a view to encouraging competition, and furthermore, to ignore the economic impact of the removal upon the trading operation of the other licensees in the locality.”¹⁰

(footnotes omitted)

- 41 Mr Ellyard described the Gouger Street store as “a convenience driven everyday you need type business”¹¹ that stocks between 1000 and 1500 lines designed to meet the average person’s needs. He said that in percentage terms it sold roughly equal amounts of beer, wine and spirits. He described the Vintage Cellar store that is proposed for the Hutt Street site as specialist fine wine facility carrying over 2000 lines designed to cater for the enthusiast. He spoke of the recruitment policy in respect of such facilities, which was focussed towards wine enthusiasts. He said that Vintage Cellar stores have a particular emphasis on international products and the national average sale in such stores was of the order of \$60 per customer as opposed to half that amount in the industry generally. He contemplated a continually changing range of wines and offering a range of malt whiskeys. He said he expected the store would sell 65 to 70% wine, about 15% spirits and 10 to 15% beer, with the remainder being sundries.
- 42 He acknowledged that the Hutt Street site was a much smaller facility than the Gouger Street store and the limited parking facilities in that area were evident in attempting to park when we viewed the site. He said that the area, including storage, was about 130 square metres. He said that he expected the Hutt Street site would attract about 600 or 700 customers a week over a twelve hour day seven days a week.
- 43 He informed me that Liquorland and Vintage Cellars are part of the Coles Liquor Group and produced to the court a document that has been formulated by Coles as part of its training regime relating to the responsible service of alcohol as well as a document containing guidelines relating to alcohol affected customers. They are comprehensive.
- 44 He told me of initiatives that were undertaken at the Gouger Street store in dealing with itinerants and people living in the West Terrace Cemetery. I am permitted to know that a number of these people abuse alcohol. He said that in consultation with the local police they stopped

¹⁰ [2001] SASC 232 at paras 89-01

¹¹ Tr 18

stocking various products and it got to the point that these people had little interest in attending the store.

- 45 Mr Burns and Mr Smith reported their findings in relation to where people work and live in the city. As at 2006 in all there were about 10,000 people living in the city. Nearly half lived in the southeast quadrant, with the largest concentration east Pultney Street.
- 46 I am permitted to know that the residential area east of Hutt Street is reasonable affluent.
- 47 About 2000 people live in each of the northwest and southwest quadrants of the city and the remainder in the northeast.
- 48 As at 2008 just over 100,000 people worked in the city. Just over 80% worked in the area north of Grote and Wakefield Streets with a pretty even distribution east and west of King William Street. There was also a pretty even distribution of the 18,750 or so people who worked south of Grote and Wakefield Streets.
- 49 I am permitted to know that Hutt Street is a popular destination for tourists, visitors to the city, and for those who work or live in the city and that it boasts a large number of varied eating facilities.
- 50 Within two hundred metres south of the Hutt Street site is the Hutt Street Centre. It is a facility that provides meals and services to homeless and vulnerable people, many of whom sleep in the South Parklands (which is not a “dry” area) or in boarding houses, community and public housing across the city. Many of those who use the facility are either alcoholics or alcohol abusers.
- 51 Across the road from the Hutt Street Centre site is the Hutt Street Cellars, which as mentioned before, is attached to but physically separate from the Arab Steed Hotel.
- 52 The Hutt Street Cellars operates independently but trades under the Sip’n Save banner. It thereby has access to lines promoted by that entity but can supplement these with other products that it wishes to sell.
- 53 I heard evidence from the manager of the Hutt Street Cellars, Mr Lumb. He is enthusiastic about wine and has broadened the stock of that business. Having viewed the facility and read its stock list and in reliance upon my own experience I think it is fair to say that it carries a more extensive range than a typical Sip’n Save store. Mr Lumb conceded that it is not as boutique as the East End Cellars, which apparently has an extensive range of boutique wines. Mr Lumb, whilst asserting that by comparison with the Vintage Cellars stock list, the Hutt Street Cellars fared pretty well, conceded that it did not carry as extensive an

international range. He told me that in the 2010 financial year the Hutt Street Cellars sold 40% wine, 31% beer, 16.5% spirits, 7% ready to drink beverages, 4.5% casks and 1% chips, soft drinks and the like.

- 54 Mr Lumb said that some of the Hutt Street Cellars' customers are persons who use the services at the Hutt Street Centre. He acknowledged that much of the alcohol used in the South Parklands is purchased from his store. He made the point that if the customer is an adult and is not intoxicated he has no right to refuse service.
- 55 I find that the Hutt Street Cellars generally caters for everyday type customers albeit it carries a more extensive range of wines than such facilities usually offer.
- 56 I heard evidence from Mr Abbott. He is a licensed surveyor who has practised in Hutt Street since 1985. He lives in the city. He is an honorary member and past Chairman and President of the Hutt Street Precinct Association. He said he spoke on behalf of 25 objectors. He described the change of Hutt Street from a run down street to an eclectic mix of businesses many of which are small and family run. He spoke of issues between the clients of the Hutt Street Centre and alcohol. He said that in the past the licensee of the Hutt Street Cellars had been physically and verbally harassed, but through a combination of a firm stance and giving the Hutt Street Centre clients some ownership of the Street by having them tend to plant boxes had substantially alleviated the problem. He said that the residents he spoke for were worried about the impact of another takeaway liquor facility in the vicinity of a large group of homeless people.
- 57 He also spoke of their concern of an intrusion on the limited parking available in the area and of a particular concern about the impact of deliveries to the proposed store through a narrow road, Corryton Street, which runs behind it.
- 58 I heard evidence from Mr Cox, the CEO of the Hutt Street Centre. He said that many of the Centre's clients abused alcohol and he expressed his concern of having another outlet at which his clients could purchase alcohol in close proximity to the Centre.
- 59 I thought all of these witnesses were doing their best to help me and I accept their evidence.
- 60 The Hotel objectors contend that I should approach the issue of discretion with factors similar to those that might be considered in the context of a new license in mind. Mr Firth, counsel for the Hotel objectors, reminded me that the Gouger Street store had been closed for over two years. He said that its customers had disappeared and have now been absorbed by the other facilities within the locality. He said that

what is now sought is a different type of facility, in a smaller store with no on site parking in a different part of the city. He contrasted this application with one that involved an applicant who was about to close down from one site to move to another within the locality shortly thereafter to conduct the same sort of business providing the same service to the same clientele. He said that I should also be concerned about allowing the establishment of a business so close to an existing and similar facility in circumstances where there is no evidence that indicates that persons within the locality are not having their liquor purchasing needs met.

- 61 Mr Allen, for the Adelaide City Council, contends that the Hutt Street precinct is a delicately balanced area and that the introduction of another packaged liquor outlet is likely to result in an increase in the harmful and hazardous use of alcohol and that this is inconsistent with the needs and aspirations of that community.
- 62 Mr Abbott expressed his concern that the grant of this application might have an adverse impact upon the local community, which he described as a country town main street within the city.
- 63 The difficulty that I have with many of the matters raised by the Hotel objectors is that they focus upon the Gouger Street store. I think my focus must be primarily towards the Hutt Street site.
- 64 Based upon the evidence of Mr Ellyard, which I accept, I find that what is proposed is a smallish, boutique type facility that will have some similarities with Hutt Street Cellars but it will be different. I appreciate that Mr Lumb's figures about sales are based upon actual sales whereas Mr Ellyard's figures are based on estimates. However, having inspected the Vintage Cellars store in the Market, having seen a Vintage Cellars brochure and having viewed the Hutt Street Cellars, I was left with the very firm impression that the nature of the business proposed for the Hutt Street site is different to the business being conducted at the Hutt Street Cellars and I so find.
- 65 Having regard to the relative affluence of the residential area east of Hutt Street I think it is likely that some of the residents living there, as well as others living elsewhere in the city, would be attracted to the business that the applicant intends to conduct at the Hutt Street site. So too will many who work in the city. I think it is likely that the licensed restaurants operating in an around the Hutt Street precinct will make purchases of liquor from a Vintage Cellars store operating in Hutt Street as will people wishing to take their own liquor to eating facilities within that area that offer BYO and I so find. Indeed, given the large number of people who work and live in the city and the concentration of residents in the southeast quadrant I think it is likely that the creation of a smallish

boutique liquor outlet of the type proposed will add to the attractiveness of the city and in particular to the Hutt Street precinct and I so find. The grant of this application will fulfil the object that is directed towards the sale of liquor being for the benefit of the community as a whole.

- 66 Whilst the fact of a not dissimilar retail facility near to the proposed premises is a relevant factor, as is the fact of other retail facilities within the city, what is also relevant is my finding that the grant of this application will offer consumers an alternative product that will encourage competition.
- 67 I acknowledge that the removal to the Hutt Street site will result in the loss of a facility in the southwest corner of the city. This is a relevant factor. But it needs to be noted that there remains the Sip'n Save facility attached to the Elephant and Castle and the BWS store in Gilbert Street is not far away.
- 68 The views expressed by the Council and the other objectors about the impact of another liquor outlet so close to the Hutt Street Centre are relevant.
- 69 However, in light of the Coles' policy and guidelines in relation to the responsible service of alcohol and the measures taken at the Gouger Street store, I find that those working at the proposed Hutt Street site will be mindful of the potential for the store to contribute to alcohol abuse and will take steps to deal with that contingency.
- 70 As for the issue of parking, given that the Council has taken no objection to the proposed venture and based upon my own knowledge of the street parking in the vicinity of the proposed site and the number of anticipated customers I do not regard this as a sufficient factor to warrant refusing the application.

Conclusions

- 71 I am satisfied that the application for the removal of the applicant's retail liquor merchant's licence involves the movement of the licence from one facility to another within the same locality.
- 72 Whilst there are some matters pointing towards exercising my discretion not to grant the application the matters pointing towards granting it outweigh them. In my view the public interest does not require me, in the exercise of my discretion, to refuse the application.
- 73 I therefore grant the application.

Addendum

- 74 During the course of final submissions I raised with the applicant's counsel the possibility of imposing a condition that it not be permitted to sell cask wine. I did so because common experience tells us that people who abuse alcohol frequently do so through the ingestion of bulk wine from casks. It seemed to me that the imposition of such a condition could further allay concerns about another retail liquor facility in proximity to the Hutt Street Centre.
- 75 I did not proceed to include this in my order as I have some doubt as to whether it is permissible to impose such a condition. In *Bottega Rotolo Pty Ltd v Saturno's Colonist Tavern P/l & Anor*, DeBelle and Bleby JJ said:
- “...it is not, generally speaking, possible for an applicant for a retail liquor merchant's licence to seek nor for the licensing authority to impose a condition on the grant of a licence that the sale of liquor to be restricted to a particular type of liquor.”¹²
- 76 However it also needs to be noted that s 43(1) of the Act enables a licensing authority to impose licensed conditions and one of the examples provided is:
- “to ensure that the nature of the business to be conducted under the licence conforms with representations made to the licensing authority in proceedings for the grant of the licence or other proceedings under [the] Act.”
- 77 The applicant indicated to me that it would agree not to sell cask wine. Arguably I could rely upon this representation to impose a condition restricting the sale of liquor to prohibit the sale of cask wine.
- 78 If I were to impose such a condition I would be minded to go further than I proposed. Common experience also tells us that those abuse alcohol frequently do so through the ingestion of bulk fortified wine. Accordingly, I would contemplate an additional restriction preventing the sale of fortified wine in containers of greater than one litre.
- 79 The applicant's counsel advised me that he would liaise with the solicitors acting for the Adelaide City Council with a view to reaching some agreement as to appropriate restrictions.
- 80 I directed the applicant to prepare minutes of order for my consideration and granted the parties liberty to apply generally.

¹² [2008] SASC 6 at para 46