

*Henley Square Fine Wines* [2014] SALC 42

**LICENSING COURT OF SOUTH AUSTRALIA**

HENLEY SQUARE FINE WINES

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

**FILE NO:** 2160 of 2014

**HEARING DATE:** 1 September 2014

**JUDGMENT OF:** His Honour Judge BP Gilchrist

**DELIVERED ON:** 1 September 2014

**REPRESENTATION:**

Counsel:

Applicant: Mr J Firth with Mr D Tillett

Solicitors:

Applicant: Duncan Basheer Hannon

- 1 On 1 September 2014 I granted an application by Henley Corp Pty Ltd as trustee for Henley Corp Trust for a Retail Liquor Merchant's Licence in respect of premises to be constructed within the Henley Pavilion Shopping Centre on Seaview Road, Henley Beach.
- 2 In order to succeed, the applicant needed to satisfy the Court that:
  - it being a corporation, each person in a position of authority is a fit and proper person to do so;<sup>1</sup>
  - the premises will be of sufficient standard;<sup>2</sup>
  - the operation of the licence would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity, and prejudice to the safety or welfare of children attending education facilities in the vicinity of the premises;<sup>3</sup>
  - any approvals, consents or exemptions required to permit the use of premises for the sale of liquor have been obtained;<sup>4</sup>
  - any other relevant approvals, etc, to carry on the proposed business have been obtained;<sup>5</sup>
  - it satisfies the pre-requisites for the grant of a retail liquor merchant's licence;<sup>6</sup> and
  - that the application warrants the favourable exercise of the Court's discretion.<sup>7</sup>
- 3 The application drew objections from the proprietors of the Ramsgate Hotel and the Henley Hotel. Prior to the scheduled hearing the objectors indicated they did not wish to participate in these proceedings.
- 4 Hence the application proceeded unopposed. I can therefore state my reasons briefly.
- 5 The Pavilion is within the Henley Square precinct, which contains several BYO restaurants, the Ramsgate Hotel, the Henley Beach Surf Lifesaving Club, the Henley Square Plaza, Henley jetty, foreshore and associated parking areas. The precinct is a Neighbourhood Centre that

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<sup>1</sup> Section 56 of the *Liquor Licensing Act 1997*

<sup>2</sup> Section 57(1)(a)

<sup>3</sup> Section 57(1)(b)(i)

<sup>4</sup> Section 57(2)(a)

<sup>5</sup> Section 57(2)(c)

<sup>6</sup> Section 58(2)

<sup>7</sup> Section 53

services nearby residential areas. It also provides a focus for recreational and social activities for the local area and beyond.

- 6 The Pavilion is a particularly attractive shopping complex. It is serviced by underground parking comprising of two floors. Above it are 71 apartments spread over three levels. Within it are 33 commercial premises as well as a supermarket.
- 7 The supermarket within the Pavilion is a Foodland. It is three years old. It is one of the biggest and newest supermarkets in the State. It occupies some three and a half thousand square metres, has 22 checkouts, employs 30 full-time staff and 110 part-time and casual staff. It attracts on average 28,000 customers a week.
- 8 The proposed premises will trade as a cellar selection member of Cellarbrations. There are about 26 Cellarbrations stores in South Australia about half of which trade in the cellar selection group, which concentrates on the premium high-end part of the liquor market.
- 9 The applicant's sole director is Mr Richard Antunes. He is also the director of the landlord company, and a director of the companies who have developed the whole centre and the apartments. He operates a restaurant called Evida at Henley Square. He works in the area and has lived in the area for over 20 years. The applicant and its director are plainly up to the task of properly conducting the business of a retail liquor merchant.
- 10 I approve the applicant company as fit and proper, and Mr Antunes as a responsible person, director and shareholder and trust beneficiary as set out in the application.
- 11 The proposed facility promises to be a reasonably large walk-in bottle shop that will be well stocked and presented. The Cellarbrations brand enjoys a good reputation as retail liquor outlets. I have no doubt that the proposed facility will be suitable.
- 12 A plan of the area and my own knowledge of the area indicated that the proposed premises posed no threat of the type contemplated by s 57.
- 13 It is plain from an inspection of the Commissioner's file that all relevant approvals, consents or exemptions required to permit the use of premises for the sale of liquor have been obtained.
- 14 I now turn to the issue as to whether the application satisfied the pre-requisites for the grant of a retail liquor merchant's licence consider s 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.”

In determining whether this test has been met licensed premises within and outside the boundaries of the locality had to be considered.<sup>8</sup>

- 15 The planner, Mr Jeffery Smith identified the relevant locality by reference to the foreshore, the Adelaide-Grange Railway, Frederick Road, Grange Road, Tapleys Hill Road and the River Torrens outlet.
- 16 I found that the locality is by and large as Mr Smith suggested.
- 17 Of considerable significance in this case is that fact that some years ago there was a liquor bottle shop opposite Henley Square at the Ramsgate Hotel. For commercial reasons the proprietor of the hotel demolished and replaced that bottle department with a quite large beer garden, gaming facilities and smoking area. As a result there are no take-away liquor facilities in Henley Square.
- 18 The nearest take-away liquor facility to the proposed premises is a BWS drive through attached to the Henley Hotel on the Esplanade, just under a kilometre away south of the proposed premises. About two kilometres north is the Grange Hotel. It has a drive through trading under the Thirsty Camel badge.
- 19 About two kilometres east of the Henley Hotel is the Lockleys Hotel. It has a drive through that also trades under the Thirsty Camel badge. Nearly three kilometres east of the proposed premises, on the eastern side of Tapleys Hill Road at Fulham Gardens, is a stand-alone bottle shop trading under the BWS badge.
- 20 Next is the Findon Hotel on Grange Road, Findon. It is over four kilometres east of the proposed premises. Beyond that, over five kilometres north of the proposed premises in the West Lakes Shopping Centre is a stand-alone bottle shop trading under the Sip n Save badge. In my view these and the facilities further away are too remote to be relevant.
- 21 A number of statements were tendered by persons living in the vicinity attesting to their desire to combine their take-away liquor purchasing with the other use of the Pavilion.

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<sup>8</sup> *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* [2000] SASC 116; (2000) 76 SASR 290 at 299.

- 22 In *Woolworths Limited* I made reference to an earlier decision of mine in *Liquorland (Aust) Pty Ltd* and of my observation in that case that some people do not like purchasing take-away liquor from a hotel and would prefer to make their purchases from a dedicated retail facility. I qualified this recently in *Woolworths Liquor BWS Arndale*<sup>9</sup> but not in a way that is relevant here. It might be expected that a not insignificant portion of the people living within the locality would desire to make their take-away liquor purchases from a facility that is not attached to a hotel of the type provided for by the hotels.
- 23 The needs evidence confirmed my own observations that the take-away liquor facilities in and about the locality do not adequately cater for the relevant public demand for liquor for consumption off licensed premises. Accordingly I formed the view that the proposed premises are necessary to satisfy that demand.
- 24 As to the issue of discretion, there was no basis to refuse the application. Indeed, to the contrary, the grant of this licence is in the public interest. Many of the people living in the locality are already using the Pavilion. The addition of a retail liquor facility will further add to its attractiveness and will meet a growing desire by many to combine their take-away liquor purchases with their supermarket shopping.

### **Conclusion**

- 25 The applicant has satisfied the tests applicable to establishing that a retail liquor merchant's licence is necessary, that the proposed premises are suitable and that the other relevant matters identified in the Act are of no concern. The exercise of the Court's discretion does not require the application to be refused.
- 26 In accordance with the submissions put by counsel I direct that the licence is to take effect from 1 November 2014, but I grant the applicant liberty to apply if there needs to be any amendment to that date.

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<sup>9</sup> [2014] SALC 14