

LICENSING COURT OF SOUTH AUSTRALIA

FLEURIEU GIN PTY LTD

JURISDICTION: Referral from Commissioner
CASE NO/S: LC-24-00167
HEARING DATE: 9 January 2025
JUDGMENT OF: His Honour Judge BP Gilchrist
DELIVERED ON: 9 January 2025

CATCHWORDS:

Referral from the Liquor and Gambling Commissioner – The applicant, Fleurieu Gin Pty Ltd, applied to Commissioner for the grant of a liquor production and sales licence to permit it to change its existing business model to enable it to conduct functions at its premises in respect of which it sought and obtained the requisite planning approval and spent considerable money constructing a function venue – The application drew numerous objections from nearby residents – The Court in the exercise of its broad powers conducted an informal hearing and ascertained that the primary concern of the objectors was the potential for the new business model to unreasonably interfere with their enjoyment of their land – The Court raised with the parties the possibility of granting the application on an interim basis to ascertain how the venue with its new licence would operate – The parties agreed with this suggestion and interim orders granting the application were made – Liquor Licensing Act 1997.

Sons of the Southern Cross Adelaide South Incorporated [2024] SALC 106

REPRESENTATION:

Applicant: Mr J Dodd
Piper Alderman Lawyers

Objectors: Mr N Saers
Mr S Lock
Ms B Wilson
Ms C Roper
Ms J Cavell

- 1 The applicant, Fleurieu Gin Pty Ltd, applied to the Liquor and Gambling Commissioner for the grant of a liquor production and sales licence under the *Liquor Licensing Act 1997*, to permit it to change its existing business model to enable it to conduct functions at its premises in Forktree Road, Myponga. In connection with this proposal, it sought and obtained the requisite planning approval and spent considerable money constructing a function venue.
- 2 I understand that from time to time it sought and obtained short term licences from the Commissioner to conduct events there.
- 3 The within application drew objections from a number of nearby residents and it was to be the subject of a determination by the Commissioner's delegate. For reasons that are not presently relevant, the delegate ultimately resolved to refer the application to the Court.
- 4 As was observed by the Court in *Sons of the Southern Cross Adelaide South Incorporated*,¹ the Act confers upon the Court broad powers that enables it to adopt a flexible approach to matters before it.
- 5 In the exercise of those powers, I resolved to conduct an informal hearing wherein I discussed the matter in the presence of all parties. I also resolved to take into consideration the material contained within the Commissioner's file.
- 6 On the face of it, the application seemed relatively modest and one which would create employment opportunities and which would further tourism and hospitality in the general vicinity of the venue. As with all matters to be decided under the Act, regard must be had to the objects of the Act.² Those objects include facilitating "the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry".³
- 7 My preliminary assessment was that this application had much to commend it.
- 8 On the other hand, I could not ignore the fact that it attracted multiple objections.
- 9 It became apparent that the primary concerns of the objectors was the potential for the venue to unduly compromise their enjoyment of their properties.
- 10 This plainly is a matter that a licensing authority is obliged to take into account in determining whether to grant an application and if so whether to subject it to conditions to address those concerns.

¹ [2024] SALC 106.

² Section 3(2) of the Act.

³ Section 3(1)(d) of the Act.

- 11 That is not to say that because a new licence will cause some interference to neighbours, a licensing authority must take steps to address this. The Act promotes the granting of new licenses in recognition of their importance to the hospitality industry and related industries, such as tourism. It becomes a question of reasonableness recognising that often the grant of a new licence will cause some interference to others. Ultimately this calls for a judgment as to whether the interference is so unreasonable as to require the application to be refused outright, or modified.
- 12 In this case, the extent of the interference did not appear to be self-evidently unreasonable. In those circumstances, it seemed to me that an appropriate way to deal with the matter might be to allow the application on an interim basis to ascertain how the venue with its new licence would operate. That way, instead of speculating as to the level of interference that it might cause, there would be actual evidence that might allay the objector's concerns or establish that those concerns were well founded. I raised this possibility with all parties and they all agreed to it.
- 13 In all the circumstances, I was satisfied that this was the appropriate course to take.
- 14 Accordingly I made the following orders:
 1. That the Applicant's application for a Liquor Production & Sales Licence be granted on an interim basis for a period of six months.
 2. That the trading hours permitted under the licence for the sale of liquor for consumption on the licensed premises shall be as follows:
 - 2.1. Sunday to Thursday: 11:00 am to 5:00 pm;
 - 2.2. Friday and Saturday: 11:00 am to 9:00 pm;
 - 2.3. Fridays and Saturdays when functions are provided by the licensee: 11:00 am to midnight, consistent with the terms of the Development Approval for the premises.
 3. In the event that no application is made to the Court by the parties during the interim period, the licence shall continue on a permanent basis.
 4. That the parties shall have liberty to apply until the expiration of the six month interim period.