

*Playford City Soccer and Community Club Inc* [2011] SALC 28

**LICENSING COURT OF SOUTH AUSTRALIA**

PLAYFORD CITY SOCCER AND COMMUNITY CLUB  
INCORPORATED

**JURISDICTION:** Application for Hotel Licence

**FILE NO:** 684 of 2011

**HEARING DATE:** 28 March 2011

**JUDGMENT OF:** His Honour Judge WD Jennings

**DELIVERED ON:** 12 April 2011

**REPRESENTATION:**

Applicant's Counsel: Mr J Firth, with him Mr R D'Aloia  
Applicant's Solicitors: Clelands Lawyers

- 1 This application for a Hotel Licence by the Playford City Soccer and Community Club incorporated at Angle Vale is somewhat unique. What makes it unique is that the subject site has been the subject of two previous successful applications for a Hotel Licence. Both of those earlier applications were heard and determined by His Honour Judge B St L Kelly. Both of his decisions were brief. In his first ex tempore reasons for decision dated 22 January 1992 notwithstanding the evidence from a number of objectors he found that “ ‘need’ has certainly been proved conclusively”. As to the important issue of “locality” he simply found “locality seems to me to be very roughly the areas nominated by the planner”. He granted the application. The second application was for the removal of a Hotel Licence from Whyalla to the same site. In his decision dated 31 May 2002 again in somewhat brief reasons for decision, he dealt with the question of need locality thus:

“In 1992 (see my judgment dated 22 January 1992) I found that there was a need for Hotel facilities at this very site. Since then no Hotel has been built and yet the population in the locality has increased markedly and continues to increase. The need witnesses in this case have confirmed all that I believed in the original case namely that a need for a Licence to permit Hotel facilities was proven.

That need is currently unmet and there are no relevant licensed premises anywhere within the locality to require consideration.

This all begs the question – what is the locality? In the original case I had a planning report some of which has gone missing. In particular a map I relied upon to establish that locality. Nevertheless, on all of the material before me I can but find the locality to be that highlighted in Exhibit 11 and to encompass those areas highlighted thereon”.

- 2 Neither of those decisions resulted in the Hotel being built.
- 3 The applicant in this case seeks a certificate of approval pursuant to s 59 of the *Liquor Licensing Act* for proposed Hotel.
- 4 A number of objectors attended a directions hearing that I conducted in advance of the main hearing. Between those dates the applicant and the objectors reached an agreement as to the conditions that should attach to the licence should it be granted.
- 5 Section 58 of the Act provides:

“(1) An applicant for a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality

in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.

...

- (3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under a certificate of approval.”

- 6 Mr Firth, counsel for the applicant, tendered the Court file<sup>1</sup> which contained the application, the local Council’s planning approval for the proposed Hotel, the landlord’s approval, the financial arrangements including a loan agreement, the applicant’s Constitution, Minutes of its relevant meetings authorising the application and the Report to the Liquor and Gaming Commissioner.
- 7 Mr Firth in support of the application called the following witnesses: Mr Graham Burns, planner (who gave evidence in the two earlier applications), Mr Voigt, the chairman of the applicant, and local residents “need” witnesses, they being Mrs McDermott of Angle Vale, Mrs McGowen of Lewiston, Mr Hogg of Lewiston and Mr Stuart of Angle Vale.
- 8 Mr Burns prepared a detailed planning report<sup>2</sup> in which he noted:
- The Angle Vale shopping centre is located to the south of the subject site.
  - The applicant’s existing premises are at 32 Barfield Crescent Elizabeth West and it currently holds a Special Circumstances Licence which allows for the sale of liquor.
  - There is a BWS retail bottle shop at Heaslip Road Angle Vale.
- 9 He listed the licensed premises in what he described as “the Wider Area”. There are four Hotel Licences in that Wider Area, Davoren Park, Smithfield, Elizabeth North and Virginia and those Hotels are between 6.1 kilometres (Davoren Park) and 7.9 kilometres (Virginia) from the proposed site at Angle Vale.
- 10 Based on the ABS statistics he then addressed the population in the area. He concluded that for the ten-year period from 1996 the Angle Vale

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<sup>1</sup> Ex A1

<sup>2</sup> Ex A4

region had a population growth three times greater than the rate of growth for Metropolitan Adelaide and almost twice the rate of growth for the City of Playford. He estimated the population for the Angle Vale region to be currently in the order of 10,402 persons.

- 11 He noted on various maps the fact that there are a number of large land parcels, and some recent residential allotments within the Angle Vale township boundary which are yet to be developed.
- 12 Taking into account a number of factors that he regarded as being relevant he defined the locality thus:

“I am of the opinion that the ‘locality’ of the proposed premises embraces all of the zoned township of Angle Vale, the identified ‘growth areas’ surrounding Angle Vale, the nearby suburb of McDonald Park, rural and horticultural areas to the west of Angle Vale and rural, horticultural and rural living estates to the north of Angle Vale, including areas on the northern side of Gawler River which are geographically and physically closer to Angle Vale than to settlements such as Gawler, Virginia and Two Wells.”.

- 13 This locality he said is slightly smaller than that which he defined in the two earlier applications primarily because of the construction of the Northern Expressway.
- 14 He concluded that apart from the BWS retail bottle shop there are no licensed premises of any kind within his locality.
- 15 Mr Voigt’s evidence was:
- 16 He is the chairman of the applicant and has held that position for some eighteen months. The applicant holds a Special Circumstances Licence at its premises at Elizabeth West. The Club has been there since 1958. Those clubrooms can cater for some 200 people and contains change rooms. It is proposed that they will continue to use those premises if this application is successful. The applicant has a qualified accountant as its treasurer. It has a total membership of 185 people and fields some twelve soccer teams. Between 1500-2000 people attend their soccer games.
- 17 He has been involved in discussions with the developer’s accountants, including the applicant’s accountant and the Club’s treasurer and he is satisfied the proposal will be viable from day one.
- 18 Because of the existing BWS bottle shop they do not intend having a dedicated bottle shop in the proposed hotel. They have budgeted for the employment of an experienced Manager and management team.

- 19 The total cost of the venture is \$1M which is to be borrowed from the developer and repaid in instalments by the applicant.
- 20 He agrees on behalf of the applicant to the conditions signed off on by the objectors.
- 21 They are not proposing to have discos or loud music.
- 22 It is the applicant's intention to work with the nearby residents and people in the Angle Vale locality.
- 23 They will be seeking approval for 30 poker machines.
- 24 The applicant has a website.
- 25 Money generated from the proposed hotel will be used to upgrade their current facilities.
- 26 The new modern hotel will support local wineries. The hotel's emphasis and of the applicant is focussed on families. A proposed wine list and menu was tendered<sup>3</sup> and the latter includes a very affordable "kids menu".
- 27 The "needs" witnesses, all gave evidence that can be summarised thus:
  - The population in Angle Vale has had "phenomenal growth"<sup>4</sup>.
  - The Angle Vale shopping centre is modern and very busy.
  - The proposed hotel is "desperately needed"<sup>5</sup>.
  - The existing hotels are too far away (for some up to 14 kms<sup>6</sup>) and some of them are not family-oriented nor suitable for children. They want a hotel where they can take their children/families.
  - They would like the hotel not only to have a meal and drinks but to socialise with the local residents.
  - They want the hotel as some said they could walk there whilst others said it would only be a short drive/taxi trip.
  - They are very conscious of the drink driving laws. Ms McGowen said when she and her partner visit one of the existing hotels they take it in turns to drive.

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<sup>3</sup> Ex A5

<sup>4</sup> Mr Hogg

<sup>5</sup> Ms McDermott

<sup>6</sup> Mr Hogg

- They all support the application and some of them have spoken with other residents of Angle Vale who also fully support it.

### Consideration

28 I accept without qualification the evidence of Mr Voigt and the “needs” witnesses.

29 I turn now to the important question of what is the relevant locality.

30 I accept and adopt most of the evidence of Mr Burns with the exception of his definition of “locality”. The aspect of his locality that I accept is the fact that the Northern Expressway acts as a substantial barrier constraining east-west traffic movements between Angle Vale and Munno Para, Andrews Farm, Smithfield, Elizabeth and Davoren Park, such that it forms the eastern boundary of the relevant location.

31 That finding is supported by the observations of von Doussa J in *Nepeor v Liquor Licensing Commission*<sup>7</sup>. In that case, von Doussa, 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.”

32 My view is that that locality must to a large extent and primarily take its character and definition from the nature of the licence being sought. In support thereof I refer to what Bray CJ said in *D’Oro Distributors Pty Ltd v The Superintendent of Licensed Premises and Kiley*<sup>8</sup>:

“In truth the authorities show that phrases like ‘needs of the public’ and ‘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 hotel at Wrest Point the whole of Hobart could be considered as one locality (*Bowes v Drysdale*); 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 (*Balmer v O’Neal*); and that in the case of a country hotel the area in fact served by it was to be regarded (*In re Forsyth*). It would appear that in the case of a hotel serving the tourist trade phrases like ‘the convenience of the public’ and ‘the

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<sup>7</sup> (1987) 46 SASR 205 at 215

<sup>8</sup> (1968) SASR 220 at 226-227

requirements of the locality' can be extended to a wide area, for example, the whole of New Zealand; *Alford v Licensing Control Commission of New Zealand*. And in *Re Zappia's Application* the Supreme Court of the Australian Capital Territory held that in considering the reasonable requirements of the neighbourhood of premises in the Australian Capital Territory the reasonable requirements of neighbouring parts of New South Wales could also be taken into account."

33 I also refer to and respectfully rely upon what King CJ said in *Cufone v Harvey & Anor*<sup>9</sup>:

"An important point emerged in the evidence in this case. There was evidence of an emerging desire for tavern facilities near the homes of residents. This was based upon an awareness of the dangers of driving after drinking and of the risks of infringing the drink driving laws. There is undoubtedly a growing awareness of these matters in the community. It may be reaching the stage of affecting, even transforming, what has previously been thought of as 'the needs of the public'. Such an awareness may be creating a need for a greater number of taverns, perhaps on a smaller scale than has been the custom, so that these facilities will be available to more people without use of the motor car."

34 What the Chief Justice said in that case some 25 years ago reflects the current views of the "needs" witnesses in this case.

35 Looking at the proposed site and using the Northern Expressway as the eastern boundary and taking into account the evidence, I would define the locality as that area radiating 1.5kms from the site itself. This locality is quite a bit smaller than that defined by Mr Burns.

36 It is apparent from the foregoing that I do not subscribe to the methodology used by Mr Burns as it seems to be approaching the matter and drawing his conclusion from an incorrect set of premises rather than focussing primarily on the nature of the licence and the "needs" evidence.

37 Based on the evidence of the lack of any hotels or restaurants in the locality there is clearly in my view a need for locating a hotel at the site.

38 The only licensed premises within the locality is the BWS bottle shop.

39 The Council gave Development Plan consent (292/40/2009) on 17/11/2009 and this is valid until 17/11/2011.

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<sup>9</sup> (1986) SASR 261 at 262

- 40 I would grant the application (subject to the Liquor and Gaming Commissioner certifying all of the committee members of the applicant “fit and proper persons”) subject to the following conditions:
1. Security – there shall be not less than one uniformed security officer stationed at the premises to patrol outside the hotel and the car park to ensure that patrons depart in an orderly manner at the following times:
    - a. from 11.00pm until half an hour after close time on Friday and Saturday nights when the hotel trades beyond 12 midnight; and
    - b. from 9.00pm until half an hour after close time on Sunday nights.
  2. The Applicant will place signs at the exits from the premises as follows:

“Please leave quickly and quietly in the interests of local residents.”
  3. Trading Hours will be as follows:
    - a. Monday 8.00am to 12 midnight;
    - b. Tuesday 8.00am to 12 midnight;
    - c. Wednesday 8.00am to 12 midnight;
    - d. Thursday 8.00am to 12 midnight;
    - e. Friday 8.00am to 1.00am the following day;
    - f. Saturday 8.00am to 1.00am the following day;
    - g. Sunday 8.00am to 9.00pm for off-licence consumption; 8.00am to 10.00pm for on-licence consumption;
    - h. Christmas Eve midnight to 2.00am the following day Monday to Saturday and 10.00pm to 2.00am Sunday; and
    - i. Sunday preceding public holiday 8.00am to midnight.
  4. Live entertainment will be limited to a background style of entertainment featuring solo or duo performers only.
  5. The hotel trading hours from midnight to 1.00am on Friday and Saturday nights are approved for a twelve month trial period commencing from the opening date of the hotel premises. If there are no legitimate unresolved complaints from residents during the trial period, the trading hours will be

formally approved to 1.00am on Friday and Saturday nights after the twelve month trial period on an ongoing basis.

6. The applicant agrees to erect and maintain a 'pool type' fence not less than 1.8 metres in height along the boundary of the hotel premises on:
  - a. Max Fatchen Drive; and
  - b. Heaslip Road.
7. The applicant will plant appropriate hedging landscape along the fence referred to in condition 6 above.
8. The applicant will install an automatic sliding gate across the Max Fatchen Drive entry and exit point to the premises and agrees to close this entry and exit point for both pedestrian and vehicular traffic at 10.00pm every night.
9. The applicant will support any application by the local resident objectors to the local council to delineate any area on Max Fatchen Drive adjacent the hotel premises as 'no parking' or 'no standing' zones.
10. The capacities will be:

Area 1 (restaurant/lounge 1)	155 persons
Area 2 (gaming)	130 persons
Area 3 (lounge 2)	110 persons
Area 4 (courtyard adjoining restaurant)	80 persons
Area 5 (courtyard adjoining lounge 2)	40 persons
Area 6 (courtyard adjoining gaming)	7 persons.