

LICENSING COURT OF SOUTH AUSTRALIA

WOOLWORTHS LIMITED

v

SMITHFIELD HOTEL PTY LTD

JURISDICTION: Application for a Retail Liquor Merchant's Licence

FILE NO: 4958 of 2011

HEARING DATE: 22, 23, 24 February and 23 March 2012

JUDGMENT OF: His Honour Judge B P Gilchrist

DELIVERED ON: 15 May 2012

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 - Whether in the exercise of the court's discretion the application should be refused - Held that the applicant has satisfied the prerequisites for the grant of a retail liquor licence for the proposed facility - Held that the public interest does not require the refusal of the application in the exercise of the court's discretion - Ss 53 and 58 Liquor Licensing Act 1997

Nepeor v Liquor Licensing Commission [1987] 46 SASR 205

Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern (2000) 76 SASR 290

Cufone v Harvey (1986) 40 SASR 261

Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd and anor (2002) 81 SASR 337

REPRESENTATION:

Counsel:

Applicant: Mr S Walsh QC

Respondent: Mr J Firth and Mr J Ryan

Solicitors:

Applicant: Clelands

Respondent: Talbot Olivier Lawyers

- 1 This is an application for a retail liquor merchant's licence for proposed premises at Blakes Crossing.
- 2 Blakes Crossing is a developing suburb within the City of Playford and is approximately 30 kilometres north of Adelaide. It is several kilometres north of the Elizabeth town centre. It is just north of Elizabeth Downs and northwest of Craigmore.
- 3 The applicant is Woolworths Limited, a major retail company that owns and operates a variety of retail liquor facilities throughout South Australia.
- 4 The applicant operates a Woolworths Supermarket in the Blakes Crossing Shopping Centre. The applicant proposes to establish a walk-in bottle shop separated from the supermarket premises. The bottle shop will be fitted out with a dedicated cool room and stock room with the main floor area containing shelves and cabinets for the storage, display and sale of beers, wine and spirits. It promises to be an attractive and moderately stocked retail liquor facility. It will add to the range of services available at the shopping centre.
- 5 To succeed in its application the applicant must satisfy the test postulated by s 58(2) of the *Liquor Licensing Act 1997* which provides as follows:
 - “58—Grant of hotel licence or retail liquor merchant's licence
 - ...
 - (2) An applicant for a retail liquor merchant's licence must satisfy the licensing authority 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.”
- 6 Smithfield Hotel Pty Ltd, the proprietor of the Smithfield Hotel, opposes the application. The objector contends that the licensed premises that already exist in the vicinity of the proposed facility are adequately catering for the public demand for take away liquor such that the application must be refused.
- 7 The objector also contends that in the exercise of the Court's discretion the application should be refused.

The general locality

- 8 A number of features of the general locality are uncontroversial.
- 9 Blakes Crossing occupies 206 hectares and is zoned residential and related urban purposes. It is bounded by Main North Road to the west, Craigmore Road to the south, Medlow Road to the north and the Hills Face Zone to the east.
- 10 The Main North Road is the major arterial road in this area. It generally has two lanes in each direction and it carries a very high volume of traffic, in excess 30,000 vehicles per day. It generally runs from north to south.
- 11 Craigmore Road runs from east to west and joins Main North Road to the Hills Face Zone to the east and beyond. At the junction of Main North Road to the west, Craigmore Road becomes Curtis Road.
- 12 Just north of Craigmore Road is Purdie Road. It runs from east to west and joins Main North Road to the Hills Face Zone to the east and beyond.
- 13 Further north of Purdie Road is Medlow Road. It also runs from east to west and joins Main North Road to the Hills Face Zone.
- 14 Further north of Medlow Road is Smith Road that similarly runs from east to west and joins Main North Road to the Hills Face Zone.
- 15 About a half a kilometre south of the junction of Curtis/Craigmore Road and the Main North Road, is Anderson Walk. This is a moderately sized road that runs from east to west and abuts the Main North Road.
- 16 A couple of hundred metres to the south of Anderson walk is the Munno Para Shopping Centre. This is a very large shopping complex surrounded by a very large car park. In all the Munno Para Shopping Centre stretches a distance of about half a kilometre from north to south and has frontage onto the Main North Road. About halfway across that frontage is the intersection of Uley Road, which runs from east to west and which connects the Main North Road to the Hills Face Zone. Uley road is parallel to and about a half a kilometre south of Craigmore Road. This intersection permits access to the shopping centre's car park.
- 17 Within the Munno Para Shopping Centre is a very large Foodland store, a large Coles store, and in separate premises, to the south, a Dan Murphy's liquor store. Dan Murphy's is accessible from a car park that is in turn accessible from an entrance at the intersection of Uley Road and Main North Road.

18 Yorktown Road runs generally from east to west about a kilometre south of Uley Road. It is also adjacent to Midway Road, which is a curved road that connects Main North Road to Yorktown Road. It extends to the east to the Hills Face Zone.

19 Adams Road runs from north to south. It is about two kilometres east of Main North Road. It connects Craigmore Road to Yorktown Road.

The evidence in support of the application

20 In support of the application the applicant relied upon the expert evidence of Mr Graham Burns, a planning consultant. He gave evidence about topics that included Blakes Crossing, the Blakes Crossing Shopping Centre, and vehicle movements concerning roads relevant to the application, the bus services that service Blakes Crossing, plans for growth in the northern metropolitan area, the locality, projected population growth in the City of Playford, and the 30-year plan for Greater Adelaide.

21 He described Blakes Crossing as a residential community that is anchored by a “village town centre” that provides excellent facilities. He noted that the area was presently under development with a projected population of 4,000 people upon completion, and that this was consistent with the expectation that there would be high population growth in the northern metropolitan area.

22 He described the Woolworths supermarket at Blakes Crossing as a reasonably large and attractive retail outlet. It has a floor space of 3650 square metres.

23 His report records that in the area adjacent to the supermarket there are a number of specialty shops and provision for others, which collectively comprise of 1370 square metres of floor space. There are two off street parking areas surrounding the shopping centre containing 230 car parks. The shopping centre has frontage to Main Terrace, which is just north of Craigmore Road. It is an attractive shopping centre.

24 The proposed facility is prominently located at the front of the centre adjacent to a chemist to one side and a bakery to the other. It has an external frontage to a paved footpath of Main Terrace and internal frontage to the central mall of the shopping centre.

25 None of this evidence was seriously challenged and I accept it.

26 Mr Burns thought that Main North Road constituted a physical barrier, which would impede safe, easy and convenient movement by pedestrians and motorists.

- 27 He identified what he regarded as potentially relevant retail liquor facilities that might need to be considered in determining whether licensed premises already existing in the locality in which the proposed facility is to be situated are adequately catering for the public demand for take away liquor.
- 28 These were the Smithfield Hotel, which is on the corner of Anderson Walk and Main North Road about 1.2 kilometres west of the proposed facility; Liquorland at Smithfield Plains, which is on Peachey Road on the western side of Main North Road, about 4 kilometres to the west of the proposed facility; the Midway Tavern at Elizabeth Downs, which is on Yorktown Road, about 4.5 kilometres to the south of the proposed facility; the BWS in the Craigmore Shopping Centre, which is also on Yorktown Road, a few hundred metres east of the junction of that road and Adams Road and about 4.7 kilometres to the south east of the proposed facility; and Dan Murphy's at the Munno Para Shopping Centre, which is about 1.8 kilometres to the south west of the proposed facility.
- 29 In his opinion the relevant locality is that area bounded by Main North Road to the west, beyond the Hills Face Zone, including the rural suburb of Uleybury, to the east, Smith Road, to the north, and Uley Road to the south.
- 30 The applicant relied upon the evidence of Mr Anthony Smith, its Business Manager of Licensing. He told me that the applicant operates take away retail liquor facilities under three badges: Woolworths Liquor, which are stores located adjacent to or within a Woolworths supermarket; the BWS banner, which are generally freestanding-type convenience bottle shops located inside shopping centres or on major arterial highways or attached to a hotel; and Dan Murphy's, which he described as destination-type big box liquor stores.
- 31 He said the range of liquor sold under the Woolworth's Liquor badge and the BWS badge was generally the same. I would describe the range within these stores as relatively limited and directed towards the convenience customer.
- 32 By comparison Dan Murphy's stores are almost warehouses. They stock a very wide range of local and imported liquor. In all they stock over 4000 products. They encourage bulk purchases by offering discounts. Purchasers attending these stores make their purchases through checkouts.
- 33 What is proposed here is a store operating under the Woolworths Liquor badge. Mr Smith said that he expected that the people who would use the

proposed facility will be those who are visiting the supermarket, whether that be once a week, twice a week, or four or five times a week.

34 Through Mr Smith a photograph was tendered that was intended to illustrate where the patrons using the Woolworths store at Blakes Crossing live¹. He told me that Woolworths have a program called Everyday Rewards. Customers sign up and get a card through which they can earn Qantas Frequent Flyer points. The use of the card at the checkout enables Woolworths to track where its customers at particular stores live. The photograph shows a high concentration in the area east of Main North Road, north of Uley Road, south of Purdie Road and extending to the east to the Hills Face Zone.

35 On the basis of his evidence that some seven or eight million people have Everyday Rewards cards across Australia I think it is likely that many customers using the Woolworths store at Blakes Crossing use these cards such that the information contained in the photograph regarding the addresses of those who use that store is reasonably accurate.

36 None of Mr Smith's evidence was seriously challenged and I accept it.

37 The applicant also relied on the evidence of Mr Paul Bonighton, the Area Manager for Woolworth's supermarkets. He spoke of the success of the Woolworths store at Blakes Crossing. He also spoke of changes in the shopping habits. He said:

“we find is that the traditional weekly one shop has drifted away for most people and as we've all become busier and probably a little bit time-poor, our customers are wanting to come to us two to three and sometimes four times a week.”²

38 He then spoke of the relationship between a supermarket and an adjacent liquor outlet. He said:

“Well the way our liquor shops work, they're a part of our supermarket, so the customer that includes liquor in their purchasing habits when they visit the supermarket to buy a meal solution, whether it be two or three times a week, they're also purchasing what they need for that entertaining moment, whether it be a meal or friends over, so the frequency of visit for food purchase is lining up with frequency of visit for liquor purchase.”³

39 None of this evidence was seriously challenged and I accept it.

¹ Exhibit A7

² tr 138

³ tr 139

40 The applicant called a number of lay witnesses in support of the application.

41 Ms Smallwood lives in Smithfield Plains near Curtis Road. She has lived there for nearly 20 years. She is also a counsellor for the City of Playford, which encompasses the Blakes Crossing development. She now shops at the shopping centre at Blakes Crossing. She shops daily and would visit the shopping centre just about every day. She occasionally buys liquor. She usually buys wine. At the present time she gets her husband to make her purchases, which he does by using the Dan Murphy's at Munno Para. She does not do it herself, because she does not like the car park at Munno Park Shopping Centre and does not like having to negotiate Main North Road. Given the opportunity she would like to buy wine herself from the dedicated bottle shop. She would not go to the Smithfield Hotel to buy takeaway liquor. She supports the application "because it would be like a one-stop shop".⁴ She has not used the BWS store at Craigmore because she does not visit that shopping centre. She said that it was not convenient for her.

42 Mr Bonython in lives at Craigmore just a few streets south of Craigmore Road and just west of Adams Road. He is retired. He has lived at his current address for about six years. He lives with his wife. He has three grown-up children, all of whom live nearby. He now shops at the Blakes Crossing Shopping Centre. He shops there about once a week. His wife goes more often. He purchases his liquor for himself and his wife. At the present time he buys this from Dan Murphy's at the Munno Para Shopping Centre. He does not buy takeaway liquor from the Smithfield Hotel. He supports the application because:

"well, I think from my point of view, as we get older, you know, it is easier to go to that shopping centre because it's not as crowded and I don't think you'd find too many shopping centres that don't have bottle shops nearby, particularly supermarkets."

43 In respect of the Dan Murphy's store, he said:

"... it's not the distance that annoys me. It's the - if it's a busy time - crossing the Main North Road and also the car park area was pretty congested and, you know, in busy times people get a bit irate at times in car parks."

44 He said he does not go to the Craigmore shopping centre. He said it was about four kilometres from his home. He said he had purchased some liquor from the Midway Tavern, perhaps two years ago or more.

⁴ tr 84

- 45 Mr McCaffrey is a middle-aged man who has lived at Blakeview for eight years. He has two sons who live nearby. He shops with his wife once or twice a week. They shop at Blakes Crossing and Munno Para. The reason they go to Munno Para is because they purchase special dog food at the Foodland there. He also picks up parcels at the post office from purchases made over the internet.
- 46 Mr McCaffrey is a wine enthusiast who does a lot of entertaining. At the present time he purchases his wine from many sources. He is in a wine club. He goes to Skye Cellars when they have specials. He also goes to Dan Murphy's at Munno Para. He spoke of having difficulties getting a car park at Dan Murphy's and of it not being his preferred option. He said "... when there is a crowd there it's just impossible to shop. You can't get a park and then it's just difficult to get around the shop."⁵ He does not use the BWS at the Craigmore Shopping Centre as it is out of his way. He does not use the retail facility at the Midway Tavern because he thinks it is too expensive. He does not use the bottle department at the Smithfield Hotel. He described it as an "absolute dump".
- 47 He supports the application. He said "I think it's needed in the area and it's just far more convenient access for me and my family. It is a bit of a pain to get across the road to Munno Para, and in particular Dan Murphy's."
- 48 Ms Burns has lived at Blakeview for about 20 years in a street a couple of streets south of Craigmore Road and east of Hanson Road, which is parallel to and just to the west of Adams Road. She now does her shopping at Blakes Crossing. She is a busy mother. She likes to purchase the occasional up-market lines of liquor. At present she buys wines from Dan Murphy's at Munno Para and from the BWS store at Craigmore. She strongly supports the application. She said that Craigmore is not really in her area. She does not find Dan Murphy's to be very convenient. She does not like waiting in queues at checkouts. She does not use the bottle department at the Smithfield Hotel having had some bad experiences there.
- 49 Mr Millard lives in a new development in a street west of Main North Road and just north of Curtis Road. He and his wife now shop at the Blakes Crossing Shopping Centre. They find it convenient with good car parking. They shop there three or four times a week. Mr Millard uses a wheelchair to get around. He finds it difficult to get a park at Munno Para and complained that the disability parks there are often full.
- 50 He entertains and buys spirits, beer and wine. At present he makes his liquor purchases from Dan Murphy's at Munno Para. He supports the

⁵ tr 89

application. He would like to buy liquor as part of his normal shopping rather than making a special trip to Dan Murphy's. He said that the Craigmore Shopping Centre is too far away.

- 51 Mr Sanderson lives in a street about 500 metres west of Adam Road and about 300 metres north of Uley Road. He has lived there for about five years. He now shops at Blakes Crossing. He finds it convenient. He drinks wine and spirits. He lives with his wife, daughter and five grandchildren. He is in fulltime employment. He described himself as a busy man. He supports the application. He shops about four or five times a week at Blakes Crossing. He would like to buy his liquor there. At the present time he buys liquor from various facilities on his way home from work. He rarely uses the Munno Para Shopping Centre. He rarely uses the Dan Murphy's there. He complained about its lack of service, the size of the store and of difficulties with parking.
- 52 Mr Slack lives about 400 metres north of Uley Road and about 300 metres east of Adams Road. He has lived there for about ten months. He drinks beer and spirits. He presently buys his take away liquor from Dan Murphy's at Munno Para. He does not like going there because it is inconvenient. He has not purchased takeaway liquor from the Midway Tavern or from the BWS at Craigmore. He has never been to the Smithfield Hotel. He supports the application. He would like to buy liquor when he does the supermarket shopping at Blakes Crossing.
- 53 I thought that all of these lay witnesses were credible and by and large I accept what they say.

The evidence against the application

- 54 In opposing the application the objector relied upon the expert evidence of Mr Alan Rumsby, a planning consultant.
- 55 Mr Rumsby thought that the locality was bounded to the west by Main North Road, to the east at the edge of the Hills face Zone, to the north about two kilometres north of the proposed facility, and to the south at a artificial line about halfway between Craigmore Road and Uley Road.
- 56 Mr Rumsby accepted that the addition of a retail liquor facility to the Blakes Crossing Shopping centre would add to its appeal and vitality. Mr Rumsby's view is that the Munno Para Shopping Centre is at the larger end of district shopping centres in Adelaide and is well placed to serve the surrounding communities, including those on the eastern side of the Main North Road. He said:

“...the Munno Para Shopping Centre is forecast to continue to have a significant impact on discretionary spending patterns throughout the whole of the Playford North growth areas, and to

also draw convenience trade within its more immediate catchment which includes much of Craigmore and Blakeview to the east of Main North Road...

...given the highly regulated access and turning arrangements and pedestrian actuated crossings of main North Road into the Munno Para Shopping Centre I do not consider Main North Road to represent a significant obstacle to the continuation of those discretionary and convenience trading patterns. Nor does it represent in my view and appreciable impediment to the convenient access by the majority of the subject primary catchment population in accessing liquor from existing licensed premises at the Smithfield Hotel and Munno Para Cellars...⁶

- 57 He said that although the speed limit on Main North Road in the vicinity of the Munno Para Shopping Centre is 80 kph in his experience motorists drove at lower speeds than that.
- 58 He said that the major retail facilities at the Elizabeth Town Centre and the Munno Para Shopping Centre had a very big impact on trading throughout this part of the Playford Council area. He said that as a result there had been instances where some neighbourhood centres were struggling and folding. I did not understand him to say that the Blakes Crossing Shopping Centre would necessarily suffer the same fate. I think the effect of this evidence was to stress the significance of and popularity of the Munno Para Shopping Centre.
- 59 He described the Blakes Crossing Shopping Centre as a fledgling centre that was still very much in a developmental stage. He said that most of the area earmarked for development near the centre was vacant or under construction. Accordingly it was his view that the application for a new retail liquor facility was premature.
- 60 The objector also relied on the evidence of Mr Andrew Plush. Mr Plush is a director of the objector. He has interests in several hotels including the Old Spot, which is about ten kilometres south of the proposed facility. It contains a drive through bottle department as well as a large retail facility in which people can browse and make their liquor purchases. Mr Plush gave me the impression that its range of liquor compares favourably with Dan Murphy's. It seemed to be suggested that the Old Spot was relevant to this application. I do not think it is. I think it is far too far away from the locality under consideration here for it to be taken into account.
- 61 Another hotel that Mr Plush has an interest in is the Smithfield Hotel. It is situated on the corner of Main North Road and Anderson Walk, which is parallel to and just south of Curtis Road. It has bars, gaming facilities,

⁶ Exhibit O11 at pp24-5

accommodation and a drive through “Sip n Save” bottle shop. The bottle shop is not particularly attractive. It can only be accessed by car from Anderson Walk. Vehicles leaving the hotel can only do so by exiting on to Main North Road and turning left.

62 Mr Plush said that he had plans to upgrade the Smithfield Hotel. I did not, however, get the impression that plans to upgrade the take away facility were imminent.

63 On the basis of his evidence it is clear that the take away facility at the Smithfield Hotel is very busy. He said that beer and the RTDs are the biggest sellers. He said that wine only accounted for about 10% of sales.

64 Mr Plush was asked to compare the stock lists of the Smithfield Hotel and the proposed facility. He said:

“On the proposed Woolies Liquor compared to the Smithfield, there is a bigger range of beers and ciders. In the category of the spirits, the Smithfield actually at the moment holds a greater range of actual spirit - and we're talking spirit bottles here and looking at the different types of spirits, you can see what the differences are and although they are very similar, the Smithfield holds a greater range of spirits. The RTDs - the range of RTDs at the proposed Woolies Liquor is a bigger range of the RTDs that what we do stock at the Smithfield and with the wines there is a larger range of wines proposed at the Woolies Liquor than Smithfield, but if you look at the Smithfield in all categories there is a range of red wines, white wines, sparkling, casks that would satisfy most customers looking for something to consume in a normal day-to-day set-up.”⁷

65 He explained why the objector maintained its objection. He said:

“...although there is some building activity in and around the area - our sales haven't increased to a stage that I think another outlet is warranted. I've obviously heard evidence of queues that were so big at Dan Murphy's and car parks you can't get in, but I haven't seen or experienced that either. I think between the two venues, at the moment we're adequately catering for what the public needs and the Smithfield as I said, with the bottle shop, the people that actually go through the bottle shop are people that know what they want, you know, and we certainly adequately cater for the beers, the RTDs, the normal run-of-the-mill wines that people expect and we do hold that core range that Sip'n Save have worked out is what the public actually want. We're 100 per cent compliant with all the core range, which satisfies, you know, 95 per cent of the population.”⁸

⁷ tr 250

⁸ tr 250

Analysis

- 66 The starting point is to determine the relevant locality.
- 67 It is plainly bounded to the west by Main North Road. Both planning experts agree on that. It is a major arterial road that acts as a considerable physical barrier of the type that von Doussa J spoke of in *Nepeor v Liquor Licensing Commission*.⁹
- 68 I think that the Hills Face Zone represents the logical boundary to the east.
- 69 Nothing really turns on the northern boundary. It is clearly north of Purdie Road, but as there are few, if any people living in the area immediately north of Purdie Road, whether the boundary is set at Smith Road, as suggested by Mr Burns, or a point a couple of kilometres north of the proposed facility, as suggested by Mr Rumsby, or at some other point north or south of that relevantly makes no difference. As it is, I am inclined to think that the northern boundary should be fixed at Medlow Road.
- 70 As to the southern boundary I think Uley Road is the logical cut off point. I did not find Mr Rumsby's contrary position persuasive.
- 71 It follows that there are no retail take away liquor facilities in the locality. But that is not decisive. For as DeBelle J explained in *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern*:

“When determining whether a demand exists, and the nature of that demand, regard will be had to licensed premises within the locality and those outside the boundaries of the locality which serve the demand in the locality. In the usual case, those premises will be close or relatively close to the boundaries of the locality. Regard will be had to them because they may well serve the public in that locality: compare Bray CJ in *Hoban's Glynde Pty Ltd v Firlie Hotel Pty Ltd* (1973) 4 SASR 503 at 512 and *Nepeor v Liquor Licensing Commissioner* (1987) 46 SASR 205 per King CJ at 206. A simple example illustrates the proposition. It may be possible to define a locality in which no licensed premises are to be found but there may be excellent hotels and bottle shops close to each boundary of the locality which adequately caters for the demand in that locality. It is true, as Mr Walsh contends, that premises outside the identified locality may be less significant

⁹ von Doussa J 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.” (1986) 46 SASR 205 at 215

than premises within the locality. However, for the reasons expressed, it does not follow that regard should not be had to those premises. The extent to which premises outside the locality may be relevant will depend on a number of factors including their proximity and convenience to the public whose demand has been expressed and the quality of the services provided. Both issues are relevant when assessing the demand and determining whether it is being catered for by existing premises.

Although the task of defining a boundary is frequently undertaken in applications for retail liquor merchant's licences, the limitations inherent in a defined locality must be recognised. First, it is a somewhat artificial concept since there are obvious difficulties in defining the locality with precision. The locality in which the demand exists is not capable of precise delineation. Secondly, the purpose of defining the locality is not to fix lines on a map but rather to focus attention upon the local, as distinct from the purely general, character of the public demand with which s 58(2) is concerned: per King CJ in *Nepean v Liquor Licensing Commissioner* at 206. This necessarily imprecise process is no more than a means to the end of identifying the relevant public demand and the relevant licensed premises.”¹⁰

- 72 I must, therefore, consider whether take away liquor facilities in the vicinity of the locality are adequately meeting the relevant public's demand. I will return to this shortly.
- 73 I now turn to some of the specific submissions advanced by the objector in opposing the application.
- 74 The objector contended that the application is premature and for that reason alone it should be dismissed. It said that most of the area around the proposed facility is substantially underdeveloped. It said that it did not warrant a new bottle shop now, or for a few years to come.
- 75 If this application were based solely on the premise that the proposed facility would be an attractive addition to a new shopping complex that would cater for a developing demand, there would be considerable force in this submission. The authorities make it clear that even though it might make a lot of sense to grant a new retail liquor licence, if the public demand is being adequately catered for by existing facilities in and around the relevant locality a new licence cannot be granted. In terms of this application my focus must be towards the public demand as at now.¹¹

¹⁰ (2000) 76 SASR 290 at 299

¹¹ See, for example: *Cufone v Harvey* (1986) 40 SASR 261 at 262 per King CJ

- 76 However, I do not understand the applicant to rely solely on future demand. I understand it to contend that there are a significant number of people who presently reside in the vicinity of the proposed facility who have a demand for take away liquor that are not being adequately catered for.
- 77 The objector submitted that in determining the issue of adequacy the Supreme Court and this Court has found that it is not unreasonable to expect people to travel a round trip of six to eight kilometres over good suburban roads to meet their take away liquor needs. It said that the evidence establishes that the relevant public under consideration here is very mobile and that it is common for households in the locality to own two or three vehicles. It said that these residents have to travel by car over these distances for a variety of reasons, including buying petrol. Accordingly, it said that in the circumstances, the fact that these people might need to travel these distances to meet their take away liquor needs does not establish that the existing facilities are not adequately catering for the relevant demand.
- 78 I think that this submission is a bit simplistic. The fact that these people have to drive these distances for a variety of reasons might simply mean that they are substantially inconvenienced in a number of ways.
- 79 Moreover, I do not think it accords with the relevant authorities.
- 80 In *Nepeor v Liquor Licensing Commission*¹² von Doussa J said as follows:

“In this case, the question whether the existing facilities can meet the public demand turns on whether it is reasonable and realistic to expect members of the public in the locality who seek to avail themselves of those facilities, to make a round trip by motor vehicle in the order of six kilometres or more, taking into account the traffic conditions and attendant risks which they are likely to encounter on the way. In country areas a trip of equivalent distance, usually on roads carrying a light volume of traffic, could frequently be considered reasonable, and indeed unexceptional. Such travel is an ordinary incident of country living. However, in the metropolitan area, and over routes along and across major roads, I think the position is different. Motor vehicle travel is not cheap. The cost of a round trip of upwards of six kilometres would represent a significant increase in the cost of the small purchase of liquor. In my view, the need to travel such a distance goes beyond mere inconvenience. I consider that the demand for liquor by members of the public required to so travel cannot be met by the existing facilities in the reasonable and realistic sense.”

¹² (1987) 46 SASR 205 at 219

81 In the same case, King CJ said:

“Like von Doussa J, I have reached the conclusion in this case, that the public demand in the locality cannot be met by existing facilities. The local hotel does not provide adequately to the demand for packaged liquor. The distances which many people in the locality have to travel in busy traffic conditions and across arterial roads, to satisfy their packaged liquor needs are quite unreasonable.”¹³

82 The observations by von Doussa J in *Nepeor’s* case about distances does not lead to a hard and fast rule that if persons have to travel a round trip of six kilometres or more in a metropolitan area to purchase take away liquor it necessarily follows that the existing facilities do not adequately cater for the public demand. But what they do indicate is that where distances of that order or more, are involved, particularly if they involve using or traversing major roads, the point can be reached where the court will be satisfied that what is involved is more than mere inconvenience.

83 The objector contended that the applicant’s case does no more than establish two things. One, that the grant of the licence would give the applicant a financial advantage by making its supermarket at Blakes Crossing more attractive and more competitive. Second, that some people like to make their take way liquor purchases when they do their food and grocery shopping.

84 It submitted that the first provides no support for the application and it clearly does not. But I do not think that takes the matter very far because I think it can be safely assumed that underpinning every application for a retail liquor licence is an expectation by the applicant that the grant of the licence will bring it a financial advantage. The fact that some of that advantage might be for a collateral source is not, in my opinion, particularly to the point.

85 As to the second, it submitted that the authorities make it clear that a desire to “one stop shop” is not enough to meet the requisite test. I agree that they do not. However, I did not understand the applicant to contend otherwise. I understood the applicant to say that this desire was merely a factor, amongst others, that I need to take into account. It is plainly relevant to the issue of the court’s discretion, which permits it to refuse an application even if the legislative prerequisites for the grant or removal of a licence have been met.¹⁴ It is plainly a factor in support of not exercising that discretion adversely to the applicant should I conclude that the requirements of s 58(2) of the Act have been met.

¹³ (1987) 46 SASR 205 at 207

¹⁴ Section 53(1) and (1a) of the Act

- 86 The objectors contended that the primary complaint by the lay witnesses called by the applicant about the Dan Murphy's at Munno Para related to parking. It pointed to cases where it has been said that difficulties with car parking are a fact of life that might indicate inconvenience, but mere inconvenience is not enough to satisfy the requisite test.
- 87 If the applicant's case were based solely on the assertion that car parking in and around Dan Murphy's might, at times, be difficult there would be much force in this argument. However, I do not understand this to be the applicant's case. It does rely upon car parking issues. But, it relies on more than this. It relies upon the size of Dan Murphy's. It relies upon the size of the Munno Para Shopping Centre. It relies upon the distances involved in traversing the car park there. It relies upon the difficulty that might be encountered in crossing Main North Road to access Dan Murphy's and the Smithfield Hotel. It relies upon the distances that people living in the east of the locality might have to travel to get to those facilities.
- 88 Persons living in the area north of Uley Road and east of the Main North Road can achieve access to the Smithfield Hotel by driving west along Craigmores Road towards Main North Road, then making a left hand turn into Main North Road, driving south for a short distance before moving across into the right hand lane, and making a right hand turn into Anderson Walk and then doing a u-turn in Anderson Walk to access the bottle department. The other alternative would be for these persons to drive along Craigmores Road across the Main North Road and then negotiating a street running from north to south to the left of Curtis Road and achieving access to Anderson Walk by that means.
- 89 Persons living in this area who wish to have access to the Dan Murphy's would either drive along Craigmores Road, turn left into the Main North Road and then make a right hand turn at the intersection of Uley Road and the Main North Road into the shopping centre and then drive 200 metres or so along the roads within the car park of the Munno Para Shopping Centre to the car park adjoining Dan Murphy's.
- 90 Alternatively, these persons could drive down to Uley Road, travel west along Uley Road, cross the Main North Road and enter into the Munno Para Shopping Centre car park at the intersection and again drive south towards Dan Murphy's.
- 91 Persons living in the area east of Main North Road and north of Uley Road can access the Midway Tavern through a variety of means. They can do so by driving east along either Uley Road or Craigmores Road to the Main North Road, travelling south and turning left into Midway Road and then turning into Yorktown Road.

- 92 Persons living in the area to the east of the Main North Road and north of Uley Road can access the BWS store at Craigmore through essentially the same routes that they might use to access the Midway Tavern.
- 93 I do not find it necessary to say anything about potential travel to the Liquorland at Smithfield Plains. For most of the people living in the locality access to that facility would involve a round trip of eight kilometres or more that would require them to cross Main North Road. I do not think that it would be reasonable or realistic to expect them to do so to meet their take away liquor demands.
- 94 I think that for many of the people that are living in the area east of the Main North Road and north of Uley Road, access to the Midway Tavern and the BWS liquor at Craigmore could involve a round trip of eight kilometres or more. I do not think that for them it is reasonable or realistic to expect them to have to travel those distances along and over not insignificant roads to satisfy their retail liquor demands.
- 95 In my view, the only take away liquor facilities in the vicinity of the locality that are potentially meeting the demands of the relevant public are the Smithfield Hotel and Dan Murphy's at the Munno Para Shopping Centre.
- 96 I accept that these facilities have an acceptable range of liquor available. Indeed, the range at Dan Murphy's is exceptionally good.
- 97 Whilst I accept that many people would prefer not to make their take away liquor purchases from a hotel I do not see this as an issue here because there is a stand-alone retail facility a relatively short distance away.
- 98 I accept that some people would find the size of the Dan Murphy's store somewhat daunting and would prefer to make their liquor purchase in a smaller environment. I accept that some would prefer not to have to make their liquor purchases by traversing a large car park in a large shopping centre. But none of this means that Dan Murphy's is not adequately meeting their demand.
- 99 What I do, however, consider are significant are the distances and nature of the journeys that many of the residents in the locality would be required to undertake to access these facilities.
- 100 The views expressed by Mr Rumsby about the apparent ease of traversing Main North Road and entering and exiting the Munno Para Shopping Centre do not accord with the evidence of many of the witnesses who gave evidence in support of the application. I accept the evidence of the lay witnesses of the difficulty in traversing Main North Road. It rings true. I think that having to cross a very busy road that has a

speed limit of 80 kph is an exercise that many would avoid, if a reasonable alternative were available. I accept that on occasions motorists might drive at less than the speed limit, but it would be unrealistic to think that this was always so. I think that Mr Burns is correct in saying that Main North Road constitutes a physical barrier, which would impede safe, easy and convenient movement by pedestrians and motorists.

- 101 In my view it is not reasonable or realistic for many of the persons living in the area north of Uley Road and east of Main North Road, especially those living east of Adams Road, to have to travel by one or other of the routes described earlier to satisfy their demand for take away liquor by accessing the Smithfield Hotel or Dan Murphy's. These could involve journeys of not inconsiderable distance in terms of length and time and having to negotiate a major, busy and potentially dangerous arterial road. I can imagine some of those persons might prefer to leave their take away liquor demand unmet rather than undertake that journey. What is involved here is much more than mere inconvenience.
- 102 I therefore conclude that the applicant has established that the take away liquor facilities already existing in the vicinity of the locality in which the proposed facility will be situated do not adequately cater for the public demand for take away liquor.
- 103 I now turn to the issue of discretion.
- 104 The Dan Murphy's at Munno Para was originally a much smaller store operating as a BWS store within the shopping centre itself, not far from the two supermarkets.
- 105 Dan Murphy's is, of course, part of the Woolworths group and it seemed to be suggested by Mr Firth that because Woolworths were responsible for creating the problem of not enabling its liquor store to be a form of "one stop shop" that this was a factor relevant in exercising the court's discretion to refuse the application.
- 106 In *Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd and anor*¹⁵ the Full Supreme Court held that it was appropriate to exercise the discretion to refuse the grant of a retail liquor licence where the applicant's conduct had led to the situation where the public demand was not being met.
- 107 Two things need to be said about that case. The first is that the circumstances were quite different than those that exist here. In that case the applicants were the proprietors of a tavern that contained an adequate take away faculty. In its own financial interest it decided to do away with

¹⁵ (2002) 81 SASR 337

the space occupied by the bottle shop and to use it for gaming machines. It chose not to use the premises to cater for the public demand for take away liquor in the locality. It then applied for a retail licence to meet that demand. As the Full Court said: “to grant a licence in such a case is to condone a choice not to make full use of a licence, and to decline to meet an existing demand”.¹⁶ That is a far cry from the situation here.

108 Second, even if the Dan Murphy’s were still a BWS store located within the shopping centre, I would still go on to find that it was not adequately catering for the public demand for the persons that I identified, because they would still be required to travel across the Main North Road and to travel not inconsiderable distances to satisfy their liquor needs.

109 The last retail bottle shop licence to be granted in the general area where the proposed facility is to be located was in 1994. These are the premises that have now been rebadged as the Dan Murphy’s in the Munno Para Shopping Centre. The population of the City of Playford in 1991 was just over 60,000. By 1996 it was just under 63,500. In 2006 it was just over 70,000. It can be safely assumed that the population has increased further since then.

110 In the circumstances, I would not regard the grant of a new retail liquor licence in this general area as leading to an unnecessary proliferation of such facilities in the general vicinity.

111 The public interest does not require the refusal of the application. To the contrary, the grant of this licence is in the public interest. Many of the people living in the locality are using the Blakes Crossing Shopping Centre. The exhibit A7 and accompanying evidence makes that clear. The addition of a retail liquor facility will further add to the attractiveness of the shopping centre and will meet a growing desire by many to combine their take away liquor purchases with their supermarket shopping.

Conclusions

112 In my view the applicant has satisfied the prerequisites for the grant of a retail liquor licence for the proposed facility at the Blakes Crossing Shopping Centre. The public interest does not require the refusal of the application in the exercise of the court’s discretion. The application is granted. I would now like to hear from the applicant as to the terms of the order that should now follow.

¹⁶ (2002) 81 SASR 337 at 344