

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Liquorland, Mitchell Centre
Proceeding:	Application for new off-premises licence
Applicant:	Liquorland (Australia) Pty Ltd
Nominee:	Mr Philip Dowling
Heard Before:	Mr Peter Allen (Chairman) Mr John Withnall Ms Jill Huck
Dates of Hearing:	14, 16 January 2003, 6 February 2003
Date of Decision:	13 March 2003
Appearances:	Mr A H Silvester for the Licensee

1. This has been the second attempt by the applicant to obtain approval for a new take-away liquor outlet as part of the new Coles supermarket within the Mitchell Street development known as the Mitchell Centre.
2. The new application was advertised in its own right, and this time sustained only two formal objections: one by Redco Investments Pty Ltd, the owner of the Transit Centre and several other properties in Mitchell Street, and the other by Vicdisc Pty Ltd, a company that operates the Discovery licence in Mitchell Street and the Vic Hotel.
3. Both objectors had also been objectors to the previous unsuccessful application. At the outset of the hearing of the new application, both these objectors indicated that while they wished to maintain their respective objections they had nothing to add to a reiteration of their previous cases, and would not maintain an active presence at the hearing.
4. Darwin City Council advised in writing that no objection was raised in relation to the application, and the Police had no objection provided that cask wine was to be limited to containers of two litres or less, a condition to which the applicant again readily agreed.
5. The hearing therefore proceeded without active contest.

The proposed new outlet

6. The Mitchell Centre is being developed as a high image area for locals and visitors alike, with a high degree of commercial activity. It is being marketed to tenants, both for the shops below and the offices above, as a prestige building. It will be directly managed by the local project developer, protective as much of its own major asset as of the owner's interests.
7. The Centre will be patrolled on a full time basis, and a planned TV surveillance system will initially comprise sixteen cameras, with provision for expansion as issues are learned. An information desk will be manned on the ground floor "mall" near the entrance to the proposed liquor outlet. No seating will be provided within the mall area. No "food hall" type of tenancy is planned. No permanent seating will be provided on the footpath; the form of lease will require tenants with footpath frontage to maintain the area of footpath in front of their shop as if part of the leased area, and to remove footpath seating outside trading hours. Tenants will be expected to stay open later in peak trading periods, as an attraction for tourists returning from their various tours at the end of the day.

8. The proposed Liquorland outlet is planned as a “store authority” liquor licence attached to the new Coles supermarket. The applicant corporation is a wholly owned subsidiary of the Coles Myer group. The bottleshop will have access from the supermarket and from the mall area. Its location inside the Centre away from the street precludes direct entry from the outside footpath.
9. The applicant promises a “higher grade” of liquor store than other Liquorland outlets, with a broader range of better wines. Neither the larger wine casks nor “longnecks” of beer will be stocked. All Liquorland staff will be trained in-house in the responsible service of alcohol.
10. All in all, we agree with the applicant that those persons who may be part of any current pattern of anti-social behaviour are unlikely to want to shop for liquor in such an upmarket and regulated environment that will not stock their known products of choice while those products remain readily available elsewhere.
11. The Commission made it clear in its decision on the first application that it had not been persuaded at that time that there was any real likelihood of the proposed new outlet contributing to any worsening of such level of anti-social behaviour as may already be evident in the central city area, and we have been given no reason to alter that view. On the contrary, it can be seen that there are aspects of the proposed liquor outlet that positively mitigate against any aggravation of what might be broadly referred to as the itinerant problem.

Community needs and wishes

12. The previous application foundered only on insufficiency of persuasive evidence as to needs and wishes. In this regard the new professional survey relied on by the applicant as the mainstay of its second application (Exhibit 8) has proved to be of significantly more assistance to the Commission. (The results of the survey will be broadly rounded in these Reasons for Decision for ease of illustration).
13. In all, four hundred respondents were surveyed from households which had a telephone listing within postal codes 0800 or 0820. This methodology produced only thirty respondents out of the four hundred who did not reside either in the city area or in an inner suburb.
14. The survey was supervised by Dr John Henstridge of Data Analysis Australia Pty Ltd. The Commission accepts that the sample size was optimal for such a survey, in that although sample accuracy obviously must increase with sample size, beyond three hundred and fifty to four hundred the accuracy plateaus out at about plus or minus 5% for several multiples of that sample size.
15. Of the four hundred respondents, a hundred of them had not purchased any take-away liquor at all in Darwin City or surrounding suburbs over the preceding twelve months. Just over half the total respondents (ie. two-thirds of the three hundred or so who *had* been liquor purchasers in the area) said that they *would* use the new liquor outlet in conjunction with shopping at the new Coles, and half of those (ie. a quarter of total correspondents) *did not intend to use any other outlet in preference* (ie. intended to change to the new outlet as the preferred liquor store). The main reasons stated for intending to make the change were location/access/parking, and the preference for one-stop shopping for liquor supplies along with the groceries. Avoidance of anti-social elements was not offered as a reason by any of these respondents.
16. These figures reflect only the positive responses, and ignore the primary “don’t know” responses of a little over fifty people, so could therefore be boosted by any of the undecided eventually coming to a supportive decision.
17. Even so, the results are significantly in favour of the application. The three hundred respondents who admitted to purchasing take-away liquor in Darwin City or surrounding suburbs in the past year named more than twenty-five outlets of current choice, yet not only

will two hundred of them be patronising the new liquor outlet but a hundred of those expect to do so to the exclusion of their current preferences.

18. The dramatic shifting of liquor shopping preferences represented by these figures is significant. Courts in various interstate liquor jurisdictions have long held changes in a community's shopping practices and preferences to be materially relevant to a factual judgment as to the community's "need" for a particular new liquor outlet.
19. As we have so often pointed out, the comparable requirement in the Northern Territory *Liquor Act* is for the Commission to have regard to the relevant community's "needs and wishes", an expression which on its face does not require the Commission to identify and confirm any specific unfilled need, but allows an approach more of the nature of assessing public support within a community, while nevertheless remaining sensitive to issues of undue proliferation of liquor licences. As a gauge of public support, an intention to change one's liquor purchasing pattern in favour of a proposal is undeniably strong evidence. By not excluding non-purchasers from the reported results, the new survey allows that gauge to be seen as a measure of the general community.
20. It can properly be remarked that some members of the Commission were surprised that 25% of the surveyed demographic responded as non-purchasers of liquor within Darwin city and suburban surrounds, but that figure does highlight the significance not only of over 50% of *total* respondents (ie. of the general population) supporting the application and intending to utilise the new facility but of 25% of the general population intending to do so to the exclusion of their currently preferred outlets.
21. The application was also supported by the detailed written statements of some dozen and a half Darwin residents who stood ready to verify their statements with sworn testimony should the need have arisen, and by the evidence of Mr Earley of BGE Corporate Property Consultancy (he also being President of the Darwin Business Association) as to the responses to some sixty-five contacts he personally made in that regard.
22. The Commission was persuaded, on a strong balance of probability, as to there being such a degree of public support for the new outlet as should lead to the approval of the particular application. The only outstanding issue at the conclusion of the hearing was that of perceived proliferation of liquor outlets.
23. The door is not shut to applications for new take-away liquor outlets. The Commission continues to administer the *Liquor Act* within a system of administrative law which demands that each and every application be determined on the merits. Certainly the merits may involve consideration of circumstances external to the application, but the flexibility built into the Act which allows the Commission to shift the evidentiary goalposts from time to time and to impose restrictive trading conditions cannot embrace any policy of shutting down new applications in deference to some visionary adoption of some sort of cap on licence numbers (at least not until the Act may be appropriately amended). Reference to the Commission's various written decisions in recent years will certainly show that an increasing concern with licence proliferation has seen greater demands on the part of the Commission as to satisfactory evidence of needs and wishes, especially in relation to off-premises licences. But those demands can still be met by a good case.
24. As Mr Silvester pointed out on behalf of the applicant, as long as the door is not shut against new applications, additions to the licence numbers - proliferation - will occur. The issue is "*undue*" proliferation, an expression used by the Commission many times over recent years, consideration of which must unavoidably involve a multiplicity of dynamics and pertinent issues including the nature of the licence, location, relevant community, precinct, scale, configuration, product range, relevant demographics and "catchments", competition issues, and liquor-shopping patterns and indicators of changes in community attitudes and preferences. As was noted by the Northern Territory Court of Appeal in *Lariat Enterprises and Liquorland (Australia) Pty Ltd v Joondanna Investments Pty Ltd and the Liquor Commission of the Northern Territory (1995) NTSC 38*:

In most cases, the Commission will be faced with considerations which point in opposing directions and are of differing weight. It will ordinarily be involved in a balancing exercise in determining how its discretion should be exercised.

25. That balancing exercise in this case, in the absence of any active objections, leaves the Commission positively persuaded to exercise its discretion in favour of the application. So long as the door is open to such applications, this is seen as one that should be allowed through; what the applicant proposes in this case is unavoidably perceivable on the material before us as a standard of liquor outlet that will be an asset to the shopping community in Darwin rather than a source of any additional social disquiet.
26. As the construction and fitout are not yet complete, the application is approved "in principle" pursuant to s.26(2) of the *Liquor Act*. When the premises are ready to trade, final approval will need to be sought pursuant to s.31(3) of the Act. Such final approval will be given by the Commission upon its satisfaction that the premises have been completed and readied for trade in general accordance with the concept and detail of the presentation to the Commission at the hearing.
27. The applicant's various evidentiary undertakings will be enshrined in the licence conditions. Accordingly, the licence when issued will contain special conditions
 - clarifying the licence to be ancillary to the general business of the Coles supermarket at the Mitchell Centre, as distinct from being transferable as a free-standing bottleshop;
 - prohibiting the sale of wine in containers larger than two litres;
 - prohibiting the sale of beer in individual glass containers larger than 375 ml, except for "Darwin Stubbies" in presentation pack;
 - requiring all staff serving in the bottleshop to have either completed a majority of modules of the licensee's in-house training in the responsible service of alcohol or to have received such other alternative training in that regard as the Commission may approve; and
 - requiring adherence to all other aspects of the licence concept as presented to the Commission at the hearing.

Peter R Allen
Chairman

13 March 2003