

**Liquor Commission of Western Australia  
(Liquor Control Act 1988)**

**Applicants:** Paul Kontorinis and Maria Kontorinis  
(represented by Mr Robert Nash, instructed by AVA Legal)

**Intervener:** Director of Liquor Licensing  
(represented by Mr David Leigh of the State Solicitor's Office)

**Commission:** Mr Jim Freemantle (Chairperson)  
Mr Eddie Watling  
Ms Helen Cogan

**Date of Hearing:** 15 June 2010

**Date of Determination:** 5 July 2010

**Matter:** Application for the conditional grant of a liquor store licence

**Determination:** The application is refused

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**Authorities cited in determination:**

*Hancock -v- Executive Director of Public Health [2008] WASC 224*

*Palace Securities v Director of Liquor Licensing [1992] 7WAR 241*

*Busswater Pty Ltd v Director of Liquor Licensing (LC 17/2010)*

*David McGeogh and Paul Ozanne v Director of Liquor Licensing (LC 20/2010)*

## Introduction

- 1 On 19 November 2009, an application was lodged by Paul Kontorinis and Maria Kontorinis ("the applicants") for the conditional grant of a liquor store licence for premises to be known as Paul's Cellars and located at Shop 6, 2 Austral Parade, Bunbury.
- 2 An objection to the application was lodged by Ilbery Lawyers Pty Ltd on behalf of Rose Hotel Nominees Pty Ltd, the licensee of the Rose Hotel, and Prospero Corporation Pty Ltd, the licensee of the Parade Hotel; however that objection was subsequently withdrawn. There were no other objections or interventions to the application.
- 3 In decision A204111 dated 24 February 2010, the Director of Liquor Licensing refused the application.
- 4 On 15 March 2010, Paul Kontorinis and Maria Kontorinis lodged an application, pursuant to section 25 of the *Liquor Control Act 1988* ("the Act"), for a review of the Director's decision.
- 5 On 17 March 2010, pursuant to section 69(11) of the Act, the Director of Liquor Licensing lodged a Notice of Intervention in respect of the review application.
- 6 In conducting a review under section 25 of the Act, the Commission is not constrained by the finding of error on the part of the Director of Liquor Licensing, but is to undertake a full review of the materials before the Director and make its own determination on the basis of those materials (refer *Hancock -v- Executive Director of Public Health [2008] WASC 224*).
- 7 A hearing was conducted on 15 June 2010.

## Preliminary matter

- 8 In the applicants' submissions relating to the review application, it was stated that the applicants were of the belief that a petition that had been collected containing approximately 190 signatures in support of its application for a liquor store licence had been lodged with the Director of Liquor Licensing for consideration as part of the determination of its application.
- 9 There is no record by the Department of Racing, Gaming and Liquor that it received the petition nor is there any reference to the petition in the Director's decision when he determined the application on 24 February 2010.
- 10 A copy of the petition, which was collected over the period 14 January 2010 to 17 January 2010, was received by the Department of Racing, Gaming and Liquor on 9 March 2010, together with an incoming and outgoing mail register extract from Hospitality Total Services Pty Ltd, purporting to evidence the despatch of the document to the Department on 19 January 2010.

- 11 These extracts are not considered to be sufficient evidence that the Department of Racing, Gaming and Liquor received the petition prior to the Director's decision or that the Department was responsible for an administrative error which precluded the petition from consideration.
- 12 Section 25(2c) of the Act provides that the Commission, when conducting a review of a decision of the Director of Liquor Licensing, may have regard only to the material that was before the Director when making the decision.
- 13 Consequently, because the petition was not part of the material before the Director of Liquor Licensing when making the decision, it cannot be included as part of this determination.

#### **Submissions on behalf of the applicants for the conditional grant of a liquor store licence**

- 14 The applicants currently operate Paul's Fresh Fruit and Vegetable Mega Mart which is a specialty fruit and vegetable business in the Quays Shopping Centre and wishes to complement this business by establishing a liquor store in an adjacent tenancy. If successful with the liquor licence application, it is proposed to become part of the IGA Supermarket chain with an expansion of the present grocery tenancy and the addition of a 181m<sup>2</sup> liquor store. The proposed liquor store will be established to allow patrons to purchase liquor in association with their grocery shopping and to have access to unique wines and spirits that will match the gourmet foods available from the existing fruit and vegetable business.
- 15 The applicants' Public Interest Assessment (PIA) addressed the matters set out in section 38(4) of the Act. Information was submitted on existing levels of crime in the locality; the social profile of Bunbury; local population and demographics; and tourism data for the Bunbury regional area. The applicants advertised the application widely within the local community, including letter drops to residents and businesses within a 200 metre radius of the proposed premises and provided advice of the application to schools, hospitals, hospices, aged care facilities, short term accommodation or refuges for young people, child care centres, churches, the local government authority and local police within the locality. There were no objections or interventions.
- 16 It was submitted that the proposed liquor store licence would be in the public interest for the following reasons:
- it will add to the amenity of the growing Bunbury community. There are expected to be 100,000 residents in the greater Bunbury area by 2031;
  - Bunbury is rapidly becoming a significant regional centre of WA and will need to increase the level and variety of amenity to match. The proposed liquor store will provide additional amenity for new residents;

- being an independent liquor store, the applicants will have the ability to cater to the interest of the local residents. National chains are restricted to a set model of product lines. The Applicants will have no such problems and will take advantage of the ability to better serve its customers;
- patrons will have the opportunity for convenience shopping as they will be able to purchase their household liquor needs (as required) while completing their grocery and/or other purchases at Paul's Fresh Fruit and Vegetable Mega Mart and other stores in the Quay Shopping Centre;
- the quality reputation of the applicants within the local community along with their significant retail experience (24 years running a successful business) and a robust Harm Minimisation Plan will ensure that a well operated liquor store will be in the public interest;
- the new store will allow patrons to purchase unique wines and spirits that will match the gourmet food available at Paul's Fresh Fruit and Vegetable Mega Mart;
- it is within the City of Bunbury's proper planning principles; and
- there is local support, particularly among the applicant's present customers, for the proposed liquor store.

17 The applicants also provided details of the strategies that it would adopt to minimize any negative impact that the grant of the application may have on the local community, which included:

- the adoption of "designing out crime" principles in the design of the proposed liquor store;
- the development of a House Management Policy, Code of Conduct and Management Policy for the premises;
- training staff in the responsible service of alcohol;
- the use of CCTV;
- performing ID checks for any suspect juveniles; and
- implementing a responsible advertising plan consistent with The Alcohol and Beverages Advertising Code.

#### **Submissions on behalf of the Director of Liquor Licensing**

18 It was submitted on behalf of the Director of Liquor Licensing that when considering the public interest, consideration of the objects of the Act, as set out in section 5, are a relevant consideration. Therefore, in order to demonstrate that an application for a

licence is in the public interest an applicant is expected to demonstrate that their proposed development meets the requirements of section 5(1)(c) of the Act - "to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State".

- 19 In the instant case the applicants did not provide any evidence that the application was directed towards satisfying the requirements of consumers for liquor and related services and therefore the applicants have failed to demonstrate that the objective in section 5(1)(c) has been met.
- 20 Overall, the application was generally characterised by speculation and assertion, but without the necessary evidence to support the applicants' claims.

### Determination

- 21 Pursuant to section 38(2) of the Act, an Applicant for the grant of a liquor store licence must satisfy the licensing authority that granting the application is in the public interest.
- 22 Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities v Director of Liquor Licensing [1992] 7WAR 241*).
- 23 Section 19 of the *Interpretation Act 1984* provides that regard may be had to extrinsic material, including the Second Reading Speech to a Bill, when considering the meaning and intent of a written law.
- 24 Consequently, in considering the public interest under section 38, the licensing authority needs to consider both the positive and negative social, economic and health impacts that the grant of an application will have on a community (refer *Second Reading Speech, Parliamentary Debates, WA Parliament, vol 409, p 6342*). It is not sufficient for an applicant merely to demonstrate that the grant of its application will not negatively impact on the local community. Importantly, an applicant must also demonstrate the positive impact that the grant of the application will have.
- 25 The Commission, having considered the evidence submitted, accepts that the grant of a liquor store licence at this site is unlikely to have a negative impact upon the local community. However, as indicated above, this is only one component of the test under section 38(2) of the Act.
- 26 In *Busswater Pty Ltd v Director of Liquor Licensing (LC 17/2010)* the Commission observed that in determining the positive aspects of an application, mere opinions expressed by an applicant as to the perceived benefits of the grant of its application, in the absence of supporting evidence, falls well short of the level of evidence required to substantiate such a claim. In regards to this application, whilst the applicants make a number of assertions in respect of the positive aspects that the grant of the proposed

liquor store licence may have for the local community, there was a paucity of evidence submitted to support these claims.

- 27 The applicants asserted in their PIA that patrons of the proposed liquor store will be able to purchase their household liquor needs while completing their grocery and/or other purchases at Paul's Fresh Fruit and Vegetable Mega Mart or at the other shops in the Quays Shopping Centre and that there is local support, particularly amongst the applicants' present customers, for the grant of the liquor store licence. However, while the applicants' submission stated that "There was demonstrable community support for the application", no evidence was presented indicating that patrons of Paul's Fresh Fruit and Vegetable Mega Mart or The Quays Shopping Centre have any desire or requirement for the convenience of one-stop-shopping at this location. Nor was any evidence presented to demonstrate that any members of the public have a desire to purchase the unique range of wines and spirits that the applicants propose to stock, which are intended to complement the gourmet foods available from the existing fruit and vegetable business.
- 28 In addition, whilst data was presented showing the growth of the Bunbury region, both from a population and tourism perspective with some data specifically directed to the relevant locality, there was no objective evidence presented to demonstrate how the grant of this particular application would cater for the requirements of consumers (tourists and residents) for liquor and related services now, or in the foreseeable future as contemplated under object 5(1)(c) of the Act.
- 29 The applicants provided scant information or analysis of the existing packaged liquor outlets in the locality, particularly in respect of the Parade Hotel, which currently sells packaged liquor to the public. According to the applicants, the Parade Hotel is less than 200 metres from the site of the proposed liquor store. As stated by the Commission in *David McGeogh and Paul Ozanne v Director of Liquor Licensing* (LC 20/2010), the proliferation of licences is not an intended outcome of the introduction of a public interest test under section 38 of the Act, which is particularly relevant in the absence of any evidence to demonstrate the positive impacts that the grant of the application may have on the local community.
- 30 For these reasons the Commission finds that the applicants have failed to discharge its onus under section 38(2) of the Act and satisfy the Commission that the granting of the application is in the public interest. Accordingly, the application is refused.



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**JIM FREEMANTLE**  
**CHAIRPERSON**