



Commercial and Consumer Tribunal

CITATION: *CONSUL MANAGEMENT PTY LTD V CHIEF EXECUTIVE, LIQUOR LICENSING DIVISION* [2008] CCT LR024-07

PARTIES: CONSUL MANAGEMENT PTY LTD
V
CHIEF EXECUTIVE, LIQUOR LICENSING DIVISION

APPLICATION NUMBER: LR024-07

DELIVERED ON: 14 March 2008

DELIVERED AT: Brisbane

HEARING DATE: 11 February 2008

DECISION OF: Mrs G Spender & Dr M O'Donnell

CATCHWORDS: Administrative law – review of decision of Chief Executive – liquor – grant of general licence
Liquor Act 1992 sections 3, 58A, 60, 116, 117, 119 and 121
Commercial and Consumer Tribunal Act 2003 sections 102 and 104.

REPRESENTATION:

APPLICANT: Mr A Herbert of Counsel

RESPONDENT: Mr D Robinson, Senior Legal Officer.

DECISION CATEGORY CLASSIFICATION: C

NUMBER OF PARAGRAPHS: 101

REASONS FOR DECISION

Introduction

1 On 24 October 2007 Consul Management Pty Ltd (“the applicant”) filed an application for a review of the decision of the Chief Executive, Liquor Licensing Division, Queensland Treasury, (“the Chief Executive”) made on 26 September 2007 under the *Liquor Act 1992* (“the Act”) to refuse an application for a general licence in respect of “*Bayview on Coochie*” (“the premises”) located at 348-354 Victoria Parade, Coochiemudlo Island. The premises currently holds an on-premises (meals) licence but has not traded for approximately six years.

2 The application for review was made pursuant to section 102 of the *Commercial and Consumer Tribunal Act 2003* (“the CCT Act”).

3 Section 8 of the CCT Act empowers the Tribunal to hear the application as the Act is an empowering Act as defined in Schedule 2 of the CCT Act.

4 Section 34(1) of the Act provides that an appeal to the Tribunal against a decision of the Chief Executive is by a rehearing on the evidence that was before the Chief Executive although section 35 of the Act permits the Tribunal to grant leave for fresh evidence to be presented on the appeal in certain circumstances.

Background

5 On 26 June 2006 Consul Management Pty Ltd made an application for a general licence in respect of the premises with trading hours of 10:00am -12:00midnight Monday to Sunday. The application was accompanied by a Public Interest submission dated 15 June 2006, prepared by Craven Ovenden Town Planning.

6 The premises is located on Coochiemudlo Island, a small community approximately 1km off Victoria Point in the Redland Shire and connected to the mainland at Victoria Point by a ferry. Some years ago the premises traded under an on-premises (meals) licence and was known as Aminya Gardens until it was purchased by the present applicants in 1979 and renamed. In March 2004 the Chief Executive refused an application for a general licence in respect of the premises and the applicants subsequently filed an application with the Tribunal for a review of this decision, but this was withdrawn so that a new application with fresh evidence could be made. The present application provides for a different layout of the premises with no gaming machines, amplified entertainment or bottle shop/liquor barn.

7 In a letter dated 10 July 2006 Assistant Liquor Licensing Officer Mark Rebisz of the Liquor Licensing Division (“the Division”) sought comment from the Redland Shire Council (“the Council”). In June 1995 the Council had refused an application for a tavern on the site. This decision was overturned in the Planning and Environment Court. A Consent Permit was granted on 28 June 1996 and remains current.

8 In a letter dated 10 July 2006 Officer Rebisz sought comment from the Assistant Commissioner of Police, Metropolitan South Region.

9 In a letter dated 12 July 2006 Mark Farrah, Manager Licensing Administration Unit of the Division, sought comment from Mr John English MP, Member for Redlands.

10 In a memorandum dated 12 July 2006 the Principal Licensing Officer, Compliance Unit of the Division was requested to conduct a risk assessment.

11 In a letter dated 8 August 2006 Paul Toohey, Senior Planner/Project Manager of the Council, said the Council did not support the application because of its proximity to the residential area, the likelihood of adverse impact on the amenity of the locality and the creation of undue annoyance and disturbance to persons residing there.

12 In a letter dated 8 August 2006 Assistant Commissioner K Rynders, Metropolitan South Region, Queensland Police Service, said there were objections to the application. As outlined in a memorandum dated 30 July 2006 Superintendent H A Rand, Wynnum Police District, said the reasons for objection were the small size of the population, closeness to residential properties, low level of calls to Police for liquor related offences compared with calls to islands with licensed premises, 11:15pm closure of the ferry service and the ability to purchase take-away alcohol within walking distance of the ferry terminal at Victoria Point.

13 Advertising was carried out in accordance with section 118 of the Act with a closing date for objections of 11 August 2006. 76 valid objections and a petition containing 459 signatures were received.

14 In a letter dated 15 August 2006 John McKnoulty of Liquor Licensing Consultants, the applicant's consultant, sought details regarding permits issued by the Division in respect of events or premises, particularly the Community Hall and the Coochiemudlo Island Golf Club since 1 July 2005 and details of any complaints regarding any of those premises or events.

15 In a memorandum dated 15 August 2006 Liquor Compliance Officer Shaun Elliott reported that he had visited the premises with representative of the applicant on 7 August 2006 where they indicated their proposals for future renovation of the upstairs section as a function room with kitchen and external entry from the front of the premises, and renovation of the existing cold room storage area. Officer Elliott said he anticipated problems regarding noise, patron behaviour entering and leaving the premises, lack of Police presence, inadequate security in the remote location and exacerbation of problems which already existed. He was particularly concerned about the likely problems caused by patrons as they made their way to the ferry 750m along a narrow road with bush and beach on one side and residences on the other and by the possible consequences if the last ferry were missed.

16 In a Licensing Risk Assessment dated 17 August 2006 Senior Liquor Compliance Officer Richard Cessford outlined a number of concerns and commented that new amenities were to be constructed before the premises was suitable for the primary purpose and licence type sought.

17 In a letter dated 13 September Assistant Commissioner Rynders advised Mr McKnoulty that a new police station at Redland Ray was opened in April 2006; the Wynnum District Water Police operate a vehicle barge which allows a quick response to disturbances on Coochiemudlo Island; and that response time vary due to operational requirements, prioritisation of tasks and availability of the barge.

18 An Objection Conference was conducted on 20 September 2006 and was attended by 6 persons for the applicant and 48 objectors. In his conference summary Officer Elliott said that objectors' concerns related to possible consequences of patrons being stranded on the island after the last ferry had left, an increase in drink driving because there is no bus or taxi service, the exacerbation of existing alcohol-related problems, the attraction of anti-social and criminal elements to the island, a lack of commitment by the applicant to maintaining the amenity and tranquillity of the island and the possibility that a new licensee would apply for a variation of conditions. Officer Elliott said that the applicant had undertaken to make announcements when the last ferry time was imminent, to provide a courtesy bus for patrons to the ferry terminus, to submit an acoustic report when renovations are complete to form a basis for conditions regarding sound limits. Representatives of the applicant pointed out that there would be no change in trading hours, no entertainment or gaming and no detached bottle shop and said that the applicant respected the quiet and serene atmosphere of the island. There was no resolution of the issues.

19 In a memorandum dated 6 October 2006 Officer Elliott summarised his findings regarding the application and recommended that the application be refused.

20 In a letter dated 3 October 2006 Mr McKnoulty pointed to the difficulties of obtaining deliveries of takeaway liquor when there was no legal supplier on the island. He said that the spread of detached bottle shops showed that customers and suppliers wanted takeaway liquor outlets to be located conveniently close to the market.

21 With a letter dated 7 November 2006 Mr McKnoulty attached a traffic report by Holland Traffic Consulting Pty Ltd dated 31 October 2006, a memorandum by Mr R McMahon, a director of the applicant, dated 10 October 2006 to which was attached a précis of the report by Mr P King of Max Winders & Associates, acoustic engineers, and a brochure and an extract from a regular bulletin distributed by the Coochiemudlo Island Progress Association regarding parking.

22 In a memorandum dated 21 November 2006 Principal Liquor Licensing Officer Peter Reinhold analysed the proposal in respect of public interest and amenity. He concluded that it offered an addition to the somewhat limited liquor services on the island, particularly in respect of takeaway liquor, and was not contrary to the public interest. However, after considering amenity issues, the level of risk, infiltration, isolation, the objections of Council, the Police and the Division's officers, the special character of Coochiemudlo Island, the submissions of the applicant and its acoustic and traffic reports, Mr Reinhold concluded that the grant of the licence would have an undue and unacceptable impact on the locality and that the application should be considered unfavourably.

23 In a letter dated 11 December 2006 Angie Tomlinson of the applicant's consultants provided the Division with a copy of the Council Development Assessment Committee Meeting Minutes dated 7 November 2006 approving a proposed tavern on Lamb Island. Ms Tomlinson pointed out that the tavern proposed by the applicant would be similar to that approved for Lamb Island which was of similar size and population to Coochiemudlo.

24 In a letter dated 25 January 2007 Jennifer Rolland of the applicant's consultants provided the Division with a copy of a transcript of an interview on ABC Radio with a resident of Coochiemudlo who was a member of the Progress Association. Ms Rolland submitted that the views of objectors were not truly representative of the majority of the

island's residents and more weight should be given to the views expressed by the radio interviewee.

25 In a Director-General briefing note dated 27 March 2007 Mr Farrah reviewed the history of the premises, other licences within the locality, comments of Police, the Council, Mr John English MP, objectors and Division investigators and summarised the public interest and amenity issues. He recommended that the application be refused.

26 In an email dated 2 April 2007 Officer Rebisz advised Ms Tomlinson of Compliance Unit concerns in relation to the impact of the proposal on the area and invited any further comment before the matter was forwarded to the Chief Executive for decision.

27 In a letter to the Executive Director of the Division dated 15 June 2007 Ms Tomlinson attached a submission dated 14 June 2007 prepared by Mr Herbert of Counsel, a Memorandum dated 9 May 2007 from Ray McMahon listing the Community Hall bookings referred to in the submission, the applicant's analysis of the petitions objecting to the application, a letter from an occasional visitor to the island, in support of the application, and aerial photographs of Coochiemudlo and Macleay Islands comparing the distance between the tavern and the Community Centre/Hall on the two islands.

28 In a memorandum dated 11 July 2007 Officer Reinhold provided an addendum to the public interest/amenity analysis contained in his memorandum of 21 November 2006. Officer Reinhold said that he considered it appropriate for the Chief Executive to attach considerable weight to the special environment of Coochiemudlo and that the fresh material provided by the applicant did not alter his view that the proposed tavern would unreasonably affect the amenity of the locality. He recommended that the application be refused.

29 A Director-General briefing note dated 29 August 2007 summarised the issues for consideration and recommended that the application be refused. In a memorandum dated 12 September 2007 to Officer Alan Stone, George O'Farrell, Director-General of the Division, requested that the briefing note be amended to clarify more logically the reasons for refusal.

30 A revised Director-General briefing note dated 26 September 2007 recommended that the application be refused pursuant to sections 116(2), 119(3)(a) and 119(3)(b) of the Act. The application was refused on 28 September 2007.

Decision under Review

31 The decision under review is the decision of the Chief Executive, made on 28 September 2007, to refuse an application by the applicant for a general licence in respect of the premises.

Statement of Reasons

32 In the Statement of Reasons for the decision, provided to the Tribunal, the A/Executive Director of the Division states:

- "8. *The Applicant has met all the Division requirements in relation to an application for a General Licence. All the necessary requirements were sought from the Applicant, with the information obtained recorded on the Division's database. A*

report summarising all of the requirements met in the Application is contained at pages 809 to 811 of the material. As a result, no grounds for refusal of the Application based on procedural matters could be found.

9. *There were objections from Police and Council.*
10. *A Divisional Compliance officer assessed various aspects of the Original Application and recommended refusal of the application. Regard was had to the issue of noise and related disturbance matters but it was not considered that imposition of conditions would alleviate potential problems if this application was approved.*
11. *An objection conference was conducted on 6 October 2006. Despite a discussion between objectors and the Applicant on the respective merits of the Original Application, no resolution was reached.*
12. *Upon careful analysis of the substantial official concern compounded with the objectors' concerns, it was considered there were sufficient grounds for the Chief Executive to refuse the Original Application. The information on file established that the proposal would create an undue offence, annoyance, disturbance or inconvenience to relevant persons in the locality and would lessen the amenity, quiet or good order to a sufficient degree to justify refusal.*
13. *From the submissions of the objectors, comment from regulatory bodies and an overall summary of folder of evidence, the Chief Executive was satisfied that the Original Application should be refused."*

Evidence before the Chief Executive

Applicant

33 The applicant relied on the Public Interest submission prepared by Craven Ovenden, the Noise Assessment report prepared by Max Winders & Associates, the report prepared by Holland Traffic Consulting, newspaper articles from the *Courier Mail* dated 21 January 2007 and the *Bayside Bulletin* dated 14 November 2006, a transcript of a radio interview on ABC 612 Brisbane on 24 January 2007, and correspondence between the applicant's consultants and the Division including the comments on the Objection Conference, an outline of the need for takeaway liquor facilities on the island and the response to matters of concern raised by the Compliance Unit of the Division.

Respondent

34 The respondent relied on briefing notes and internal memoranda of the Division including the assessments and analyses prepared by Officers Cessford, Elliott and Reinhold, comments from the Council, Queensland Police Service and Mr John English MP, letters of objection and the report of the Objection Conference.

Submissions to the Tribunal

Applicant

35 Mr Herbert filed written submissions and made oral submissions on behalf of the applicant.

36 In his written submissions Mr Herbert said that, in assessing whether the proposal was in the public interest, the Chief Executive had not given due weight to all the information available including the substantial body of expert and technical evidence as to the actual likely impact of the proposal on the surrounding area. He said that the Chief Executive had, instead, responded to the unsupported opinions of the objectors which had been discounted or answered by the expert evidence and the submissions of the applicant and which were of insufficient substance to overcome the public interest considerations that were clearly established.

37 Mr Herbert said a general licence was reasonably required on the island because no similar services were provided by any other facility. He acknowledged that, although the permanent population might be inadequate to support the proposal, it was nonetheless justified by the thriving and expanding tourist market. He said that the population and demographics of the island did not indicate any social dangers and there were no sensitive venues nearby. Mr Herbert submitted that this was not an instance of infiltration because alcohol was available at the Coochie Resort, the golf club and from time to time at functions at the community hall.

38 Mr Herbert said that the submission made on behalf of the applicant by Mr McKnoulty and dated 14 June 2007 had disposed of the amenity issues of concern raised by the objectors including the problems associated with the last ferry being at 11:15pm, the poorly lit and narrow street, insufficient infrastructure to deal with the number of patrons expected, an increase in liquor-related street offences, lack of a permanent police presence and the impact on the special character of Coochiemudlo. Further, the expert traffic and acoustic reports had discounted the problems raised in respect of those matters and the aerial photographs showed that the location of the proposed tavern is well away from residences in an ideal location.

39 Mr Herbert said that the proposal introduced only two new elements in addition to the services already provided under the existing licence. They were the ability to serve liquor in the absence of a meal without the constraints imposed by an on-premises (meals) licence and the ability to sell takeaway liquor. He argued that the proposal provided for only a small outlet for takeaway liquor and that being able to purchase it lawfully on the island rather than on the mainland was unlikely to affect whether or not persons would consume to excess. He said the change to a general licence would simply augment and enhance the provision of services, most of which the applicant could provide already under the existing licence.

40 In his oral submissions Mr Herbert said that the Chief Executive had not adequately acknowledged that this premises on this site had already been determined to be suitable for most of the activities contemplated by the general licence except for the sale of takeaway alcohol. He said that patrons could already consume liquor with or without a meal and it was already contemplated that people would leave the premises in the evening after having consumed liquor. Any impact from the operation of the premises and the behaviour of patrons had already been considered when the original licence was granted.

Mr Herbert acknowledged that it was possible that more patrons might drink without eating a meal, but he argued that the small size of the premises and the limited number of patrons it could accommodate made it very unlikely that this would have a significant impact on the amenity of the area.

41 Mr Herbert said the major change to the operation of the premises would be the ability to sell takeaway liquor for which there was evidently an unmet demand. He said communities throughout the State expected that takeaway liquor would be available for sale at outlets conveniently placed close to the market and that in most suburbs this service was typically provided by detached bottle shops. He said Coochiemudlo was merely a small slice of bayside suburbia with all the attributes of a small suburban locality except that it is an island. He argued that there was nothing in the makeup of the Coochiemudlo community to suggest that being able to buy takeaway alcohol on the island rather than on the mainland at Victoria Point would be any more harmful than was the purchase of takeaway supplies from a suburban bottle shop. Mr Herbert said there were a number of precedents for a change from an on-premises (meals) to a general licence in order to meet customer demand which could not otherwise be satisfied and that such a change should be permitted in this case.

42 Mr Herbert said the premises was in an ideal location for a general licence because it had attractive water views and was well removed from most of the residential area of the island. The site has no neighbours to the south, west or north; on the eastern side a large motel separated the premises from the single nearby residence. ~~Several~~ Some hundred metres to the west is the community hall which is used for various purposes including functions such as weddings and birthday parties which can be expected to generate traffic similar to or greater than that expected at the premises.

43 Mr Herbert said the orderly development of the tourism and hospitality industry on the island will require a small general licence with takeaway sales because it is unlikely that the population will ever be large enough to justify a traditional large hotel or tavern. He said this is the most suitable location and upgrading the existing facility incrementally is the preferable method of achieving an extension of the range and quality of services provided to residents and tourists.

Respondent

44 Mr Robinson filed written submissions and made oral submissions on behalf of the Chief Executive.

45 In his written submissions Mr Robinson said that, in reaching his decision, the Chief Executive had to balance the information provided by the applicant that the proposal was in the public interest against a range of concerns expressed by a very large number of persons in the locality that the grant of the application would have an ongoing social impact on the community and would damage the amenity of the locality so that their expectations about the environment of the area would not be met.

46 Mr Robinson said that the Council, the Queensland Police Service and the local Member of Parliament, Mr John English MP, had all objected to the grant of the application. The Council considered that the grant of the licence would jeopardise the amenity, quiet and good order of the surrounding residential areas and create undue annoyance and disturbance. The Police objection centred on the lack of a permanent Police presence on the island and the inability of the Police to guarantee a quick response

to problems that might arise. The Police expected that the grant of the licence would increase the number of requests for Police assistance for public order-type incidents and commented that the number of Police call-outs from Coochiemudlo were quite low compared with the number from other islands which did have general licence premises. Both the Police and Mr English were concerned with problems associated with people who missed the last ferry. Mr English said that Coochiemudlo was a quiet retreat, free from development, with a scarcity of sealed roads, footpaths and street lighting and that sound travelled across it easily. Mr Robinson submitted that, even without entertainment, noisy patrons could cause a degree of disturbance and that this was more likely to occur in a general licence premises than in one operating under an on-premises (meals) licence.

47 Mr Robinson said that the Chief Executive could not be satisfied that the grant of the licence was in the public interest. Due to its size and location Coochiemudlo had a special character which included its serenity and desirability to those who wanted a tranquil, quiet existence. The grant of the licence would impact on this environment and therefore also on the health and social fabric of the community. The impact would be exacerbated by the lack of a permanent Police presence and the consequent inability of Police to respond quickly to the increased number of calls for service which their experience on other neighbouring islands indicated were likely to occur.

48 Mr Robinson said the Chief Executive also considered that the likelihood of adverse impacts on the amenity of the locality was very high because of factors such as lack of public transport, the necessity for patrons to walk past homes, poorly lit and narrow roads, the low ambient noise level and problems associated with patrons missing the last ferry.

49 Mr Robinson argued that a number of cases before the courts and before this Tribunal and its predecessor, the Liquor Appeals Tribunal, had established that the concept of "*amenity*" was not confined to tangible factors such as traffic and noise, but extended to intangible matters such as "*atmosphere*" and the reasonable expectations of residents about the environment and character of the locality. The subjective perception of objectors that the character of the locality would profoundly change as a result of the grant of this application is a valid consideration pursuant to section 119 of the Act.

50 In his oral submissions Mr Robinson said that the Chief Executive did give careful and extensive consideration to the matters required by section 116 of the Act. However, the Chief Executive was not satisfied pursuant to section 116(4)(d) that the grant of the licence would not cause undue health and social impacts on the island. There were clear references by the objectors to problems already existing on the island including an increase in alcohol abuse and violence, increased consumption of liquor on the beach, and problems associated with visitors from the mainland who missed the last ferry. Mr Robinson said it was the view of the Chief Executive that, although the proposed premises is small and without entertainment or a drive-through, it is still a general licence with the potential to cause liquor-related problems common to general licences which would exacerbate the difficulties identified by the objectors.

51 Mr Robinson said there was no evidence that many people required facilities for takeaway liquor and many of the objectors specifically opposed it. He said that there had been one prosecution for sly-grogging but argued that neither the one prosecution nor the existence of an annual home brew expo event was evidence of a demand for takeaway liquor facilities.

52 Mr Robinson said that it was reasonable for people who had moved to Coochiemudlo for the peace and tranquillity to be concerned that their quality of life and amenity would be reduced by the grant of the licence. The extent of that concern was indicated by the very large groundswell of opposition to the present application and the maintenance of very substantial opposition to previous proposals over a long period of time. He said the concern of objectors was understandable and that a change from a non-trading restaurant to a general licence was not an incremental change but a major alteration in the use of the premises and therefore in its impact on the locality.

Legislation

53 The objects of the Act are set out in Section 3 which provide, relevantly:

“Objects of Act

The objects of this Act are –

(a) *to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change; and*

...

(d) *to regulate the liquor industry in a way compatible with –*

(i) *minimising harm from misuse of liquor; and*

(ii) *the aims of the National Health Policy on Alcohol; and*

...”

54 Part 4 of the Act deals with licences and permits. Division 2 of Part 4 deals with general licences. Sections 58A and 60 provide relevantly:

“58A Primary purpose of a business conducted under a general licence

(1) *The primary purpose of a business conducted under a general licence is the sale of liquor for consumption on the premises, or on and off the premises, together with the provision of meals and accommodation as required under the licence.*

(2) *The authority under a general licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).*

(3) *To remove doubt, it is declared that it is inconsistent with the primary purpose of a business conducted under a general licence to only sell liquor for consumption off the premises.”*

“60 Restriction on grant of general licence

- (1) *The chief executive may grant a general licence only if the chief executive is satisfied the business to be conducted under the licence on the licensed premises will have a primary purpose as mentioned in section 58A(1).*
- (2) *...*

55 An applicant for a general licence must satisfy the Chief Executive that it is in the public interest for the application to be granted pursuant to section 116. Section 116 provides relevantly:

“116 Public interest relevant to applications

- (1) *This section applies to an application for—*
 - (a) *a licence other than a club licence; or*
 - ...
- (2) *The applicant must satisfy the chief executive that it is in the public interest for the application to be granted.*
- (3) *For the purpose of satisfying the chief executive about the public interest, an applicant must give information to the chief executive about the following—*
 - (a) *the number and condition of licensed premises already existing in the locality;*
 - (b) *the distribution of licensed premises already existing throughout the locality;*
 - (c) *the extent and quality of services provided, or to be provided, by licensed premises already existing in the locality;*
 - (d) *any other relevant information that the chief executive asks the applicant to provide.*
- (4) *In deciding the public interest relating to an application, the chief executive must take into account information about the matters mentioned in subsection (3) and must also have regard to—*
 - (a) *the existing and projected population and demographic trends in the locality; and*
 - (b) *the number of persons residing in, resorting to or passing through the locality, and their respective expectations; and*
 - (c) *the likely health and social impacts that granting the application would have on the population of the locality; and*
 - (d) *an assessment of the magnitude, duration and probability of the occurrence of the health and social impacts; and*
 - (e) *the proximity of the proposed licensed premises to identified sub-communities within the locality, including, for example, schools and places of worship, and the likely impact on those sub-communities; and*
 - (f) *other information the chief executive considers relevant to the reasonable requirements of the public for liquor and related services in the locality; and*
 - (g) *the objects of the Act as mentioned in section 3 and the underlying principle of this Act as mentioned in section.*

- (5) *A reference in this section to licensed premises already existing includes a reference to premises for which a licence or permit to which this section applies is in force.*”

56 As soon as practicable after receipt of an application, the Chief Executive must advise the relevant regulatory bodies pursuant to section 117 of the Act. Section 117 provides relevantly:

“117 Advice about application etc.

- (1) *As soon as practicable after the chief executive receives a relevant application, the chief executive must tell the following about the application—*
- (a) *the local government for the relevant locality;*
 - (b) *if the application is for an extended hours permit or an adult entertainment permit—the assistant commissioner for the locality.*
- (2) *The local government or assistant commissioner may—*
- (a) *comment on the reasonable requirements of the public in the locality; or*
 - (b) *object to the grant of the relevant application on the grounds that the amenity, quiet or good order of the locality would be lessened.*
- (3) *The comment or objection must be given to the chief executive—*
- (a) *if the relevant application was required to be advertised—on or before the last day for filing objections to the application; or*
 - (b) *in any other case—within 14 days of receiving advice about the application, or within a longer time stated by the chief executive in the advice*
- (4) *In this section—*
- relevant application*** *means—*
- (a) *an application to which section 116 applies; or*
- ...”*

57 If an application is advertised pursuant to section 118, a member of the public may object to the grant of the application pursuant to section 119. Section 119 provides relevantly:

“119 Objection to grant of applications

- (1) *If notice of an application is published as required by section 118, any member of the public may object to the grant of the application, by writing filed with the chief executive on or before the last day for filing of objections as specified in the notice.*
- (2) *An objection may be made individually or by petition.*
- (3) *The grounds on which an objection about an application, other than an application for an adult entertainment permit, may be made are that—*

- (a) *if the application were granted—undue offence, annoyance, disturbance or inconvenience to persons who reside or work or do business in the locality concerned, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school is likely to happen; or*
- (b) *if the application were granted—the amenity, quiet or good order of the locality concerned would be lessened in some way.*

...

- (5) *In subsection (1)—*

member of the public means any adult individual or body of persons that in the chief executive's opinion—

- (a) *has a proper interest in the locality concerned; and*
- (b) *is likely to be affected by the grant of the application.”*

58 If the Chief Executive is satisfied that the application is in the public interest pursuant to section 116(2), he must proceed to consider the matters specified in section 121(5) which provides relevantly:

“121 Conference of concerned persons and decision by chief executive

...

- (5) *Also, in deciding whether to grant the application, the chief executive must have regard to—*
 - (a) *if the application is an application to which section 116 applies—*
 - (i) *whether the applicant has satisfied the chief executive under section 116(2); and*
 - (ii) *the matters mentioned in section 116(4); and*
 - (b) *objections made to the grant of the application; and*
 - (c) *comments from the local government for the area to which the application relates; and*
 - ...
 - (f) *the impact on the amenity of the community concerned; and*
 - ...”

59 Section 104 of the CCT Act sets out the orders which the Tribunal may make on a review hearing.

“104 Orders tribunal may make on review hearing

- (1) *In deciding an application for a review of a decision, the tribunal may -*
 - (a) *confirm the decision being reviewed; or*
 - (b) *set aside the decision and substitute another decision; or*

(c) *set aside the decision and return the matter to the State agency that made the decision with directions that the tribunal considers appropriate.*

(2) *In substituting another decision, the tribunal has the same powers as the State agency that originally made the decision.*

Example –

The tribunal may decide that an unsuccessful applicant for a licence be granted the licence either unconditionally or on particular conditions.

(3) *If the tribunal substitutes another decision, the substituted decision is taken to be the decision of the State agency who originally made the decision.”*

Issues for determination

60 In determining whether or not to grant a general licence, the Chief Executive, and in this case the Tribunal, must be satisfied pursuant to section 60 of the Act that the primary purpose of the business to be conducted on the subject premises is the sale of liquor for consumption on the premises, or on or off the premises; and the provision of entertainment on the premises; and that the business to be conducted on the premises includes the provision of meals and accommodation as required by the licence. The Tribunal is satisfied with respect to those matters.

61 The Tribunal must also be satisfied pursuant to section 116(2) of the Act that it is in the public interest for the application to be granted. If it is so satisfied, the Tribunal must have regard to the matters specified in section 121(5) (b), (c) and (f) which are objections made to the application, comments from the relevant local government authority, and the impact on the amenity of the community concerned.

The premises

62 The applicant has sought the grant of a general licence for an existing premises which currently has an on-premises (meals) licence but which has not traded for approximately six years. The premises is a 2-level building with verandahs on three sides of both levels with those on two sides of the lower level apparently containing tables and seats as part of the area available to patrons. The diagram on page 77 of the Appeal Book shows a total floor area set aside for patrons on the lower level of 238.2m² including 80.3m² of verandah and 55m² described as “*dining*”. The applicant’s consultants state that the total capacity of the building envelope and the verandahs is 94 patrons.

63 The Public Interest Assessment states that the lower level is to be converted into two spaces – one beside the bar area to be furnished with lounge chairs and the other to be furnished with tables and chairs and to be used for both dining and socialising. A space in the bar area will be devoted to takeaway sales via a window to the eastern verandah. The Public Interest Assessment also states that the upper level will remain a manager’s unit although Liquor Compliance Officer Elliott reported that the applicant had outlined proposals for future renovation to provide a function room upstairs with a kitchen and external entry from the front of the premises. He was also concerned that the facilities and state of repair of the premises made it inadequate for a general licence. In the circumstances, approval of the licence would need to be subject to appropriate compliance certification.

64 The premises is located on 2.5 acres of land on the northern side of Victoria Parade, in the south-western corner of Coochiemudlo, a small island approximately 1km off the coast at Victoria Point in the Redland Shire with which it is connected by a ferry and water taxis. The adjoining land to the north is residential, with 5 houses within 200m of the site by road; on the east an accommodation and seminar centre is being constructed; the golf course and the community hall are to the west and to the south there is a walkway to the beach. The applicant has argued that this is an ideal location for a general licence because it is in the immediate vicinity of existing facilities which have similar impacts at least from time to time; it is as far from the main residential areas as it is possible to be; and it is close to the ferry terminal and therefore convenient for visitors.

Local Community Area

65 The Tribunal accepts the applicant's submission that the relevant Local Community Area ("LCA") is the whole of Coochiemudlo, with the physical boundary being Moreton Bay which surrounds the entirety of the island.

65 The Public Interest Assessment states that, under the Planning Scheme that was current to March 2006, this area was designated "*Tourist, Business and Accommodation*" in the Strategic Plan, a designation which encouraged "*tourist accommodation uses and refreshment establishments ...and recreational uses...of a relatively low intensity.*" This was recognised by the Planning and Environment Court decision¹ to overturn the refusal of the Redland Shire Council to grant an application in 1995 for town planning consent for a tavern on the site. Consequent upon the Court's decision a Consent Permit was granted in 1996. In March 2003 the Court ordered by consent that the permit had not lapsed. That permit is still current. Under the current Planning Scheme which began in March 2006 the site is in the Medium Density Residential zone in which "hotels" are an "inconsistent use" although licensed restaurants are permitted provided they are less than 400m² in area and are undertaken as part of a mixed use development.²

Public Interest

66 With respect to the matters in section 116(3) to which the Tribunal must have regard, within the LCA there are no general licensed premises and only one regularly open licensed premises, the Coochiemudlo Island Resort, which operates under the authority of a residential licence, with trading hours of 10:00am to 12midnight Monday to Sunday. The Resort primarily provides a service to guests, but from the point of view of the general public operates as an on-premises (meals) licence. Coochiemudlo Island Golf Club trades under a restricted club permit with liquor available for consumption on the premises only during very limited hours of 10:00am to 2:00pm on Saturdays and 9:00am to 3:00pm on Sundays and to a limited range of patrons, not including the general public. The applicant's premises, Bayview on Coochie, is entitled under its on-premises (meals) licence to trade from 10:00am to 12midnight Monday to Sunday, but has not traded for many years. There are a number of licensed premises on Lamb, Russell and Macleay islands in Moreton Bay, but these are not sufficiently accessible to be considered as providing a service to residents of Coochiemudlo. Facilities at Victoria Point which is readily accessible by ferry include Victoria Point Sharks Sporting Club and Redlands Bowls Club, both with Club licences, Victoria Point Indoor Sports which has an on-

¹ *Ogilvy v The Council of the Shire of Redland, Walker & ors.* District Court, P & E Appeal No 302 of 1995, Quirk D.C.J, decision dated 25 January 1996.

² Craven Ovenden: Public Interest Assessment dated 15 June 2006. Appeal Book p22.

premises (other activity) licence, and Victoria Point Tavern at Town Centre, Main St Victoria Point with trading hours of 9:00am to 1:00am Monday to Sunday.

67 Although the existing licensed premises on the island provide facilities for patrons to consume alcohol with or without a meal, to obtain a full range of liquor services, including takeaway liquor, Coochiemudlo residents must take the ferry to Victoria Point. To this extent, a general licence would provide an addition to the services presently available on the island.

68 Because this would be the first general licence on the island, there is a question whether it should be considered as “infiltration.” However, there are already existing, though more limited, liquor facilities on the island and residents already have access to liquor outlets at Victoria Point. This is not a remote community where access to licensed facilities does not presently exist and the Tribunal considers that infiltration is not a relevant issue.

69 With respect to matters in section 116(4) to which the Tribunal must have regard, within the LCA, according to the 2001 Census data, the population was 545. Population growth for the whole of the Redland Statistical Local Area is a moderate 2.9% and applying this growth rate to Coochiemudlo which is a component of the Redland SLA it was estimated that the population in 2006 would be 629 and by 2011 would be 725. Whether these estimates have proven accurate we do not know; estimates of the current population given by the “*Synopsis of survey consultation*”³, the Officer in Charge, Redland Police Station and by some of the objectors varies from 490 to approximately 700. The Tribunal does not consider the discrepancy to be significant since at any one time the population of the island may include, in addition to the permanent population, day trippers, holiday makers and people who own homes on the island and come there only from time to time.

70 The applicant acknowledges that the population is marginal for the viability of a general licence but says that it is boosted significantly by a thriving tourist industry. Because holiday accommodation on the island is limited, it seems reasonable to assume that tourists are largely day trippers who would be likely to come to the island largely at holiday times and weekends. However, no statistical or other information has been provided about tourist numbers which are said to be crucial to the success of the venue.

71 No statistical information has been provided concerning demographic trends or the demographic characteristics of the population such as age, sex, occupation, education or income levels. The only information provided in the Public Interest Assessment is that contained in Table 7-1 which indicates that, in respect of those matters which the Division’s Guidelines regard as significant determinants of “*community risk*”, the LCA exhibited average characteristics when compared to Queensland as a whole except that both the proportion of single parents and the rates of unemployment for both men and women were higher than the State average, though not sufficiently high as to be in the “*high risk*” category.

72 Additional information is provided by a number of key community advisors interviewed as part of the Public Interest Assessment. Fr. Leo Burke of St Rita’s Parish at Victoria Point described the permanent population as stable, consisting of some families, but mostly older people and retirees.⁴ Ms Ailsa Harding of the Bay Islands Community

³ Ibid. Appeal Book p38.

⁴ Ibid. Appeal Book p27.

Services Inc said that the Bay Islands have historically been regarded as “*remote, disadvantaged and low socio-economic communities*”⁵ but that this has changed over the years to include more rental households and young families. Mr Conley of Redlands Tourism, the official tourist authority for the Redland Shire, who owns property on the island, and Cr. ~~Burke~~ Burns of the Council both state that the population of Coochiemudlo is not typical of that on the other Bay Islands because property values and the standard of new housing make the island a place where people of low socio-economic background cannot afford to live. Mr English MP summarised the population as “*socially a slice of the mainland.*”⁶

73 The applicant states that there are no vulnerable communities or sensitive facilities in the immediate vicinity of the proposal. The community hall which is 100m away is used only on a part-time basis, including twice per month for Mass. The Tribunal finds that it does not constitute a sensitive facility within the meaning of Division guidelines.

74 On the basis of the information before us, the Tribunal does not consider that the LCA is socially fragile or that there are specific concerns about vulnerable elements in the population who would be unusually susceptible to adverse health and social impacts from the grant of a general licence to the premises.

75 Access to a full range of liquor-related services is regarded as a normal adjunct of modern town or suburban living and, despite the very high level of opposition to the present proposal, there is substantial support for at least the dining and socialising facilities this premises would provide. However, many of the individual objectors, as well as a number of residents and visitors interviewed or surveyed as part of the consultation process, stated that, while they supported the concept of an on-premises (meals) licence, the island had no need of a takeaway liquor facility. They said there was a convenient outlet at Pelican’s Nest in Colburn Avenue, Victoria Point, within easy walking distance of the ferry terminal as well as other outlets accessible by bus at Koala Point and Town Centre shopping centres, and a number of outlets further away at Redland Bay and Cleveland. The objectors do not claim that there is no demand for takeaway liquor facilities, but rather that people commute regularly to Victoria Point for work, shopping and recreation and they regard purchasing liquor supplies there as a satisfactory arrangement. However, in a letter of support for the application, a visitor to the island spoke of the difficulty and inconvenience of having to convey both luggage and liquor supplies to the ferry at Victoria Point and leave them there while she went to park her car in a secure carpark some 200m distant.

76 The applicant has not provided a separate assessment of the expectations of visitors, though the Tribunal notes that there were a significant number of signatories to the petition identified by the applicant’s consultants as neither residents nor property owners. This suggests that at least some of the present visitors do not want the facilities offered by the grant of a general licence. However, Mr Conley states that a general licence would be welcomed by boat owners using the southern part of Moreton Bay and make the island an attractive stopping place since the only other facility in the area is that owned by the Royal Queensland Yacht Squadron at Canaipa Point.⁷ It seems likely that some day trippers also would welcome the facility since Rev Peter Farlow of Macleay Island indicates that day trippers there come to enjoy lunch and socialise over a few drinks before returning to the

⁵ Ibid. Appeal Book p28.

⁶ Ibid. Appeal Book p26.

⁷ Craven Ovenden op cit. Appeal Book pp30-31.

mainland.⁸ Despite the opposition to the proposal by a number of current visitors, it seems likely that additional visitors will appreciate the facilities of a general licence. This would be consistent with the experience of tourism elsewhere that, even when people visit a location for its peace, tranquillity and pleasant natural surroundings, they still expect access to the widest range of modern facilities possible.

77 The principal health and social impact issues raised by the objectors focus on the likelihood of irresponsible and anti-social behaviour by those adversely affected by alcohol, particularly young people, those who have missed the last ferry, and groups who drink until closing time and then “party” on the beach or elsewhere with liquor purchased from the takeaway facility. Opponents of the proposal fear that the presence of a general licence will exacerbate problems such as assault, vandalism, theft, and general fear-producing behaviour which already exist to some extent on the island as a result of the consumption of alcohol at functions in the community hall, in private homes and sometimes on the beach. They consider it likely that the lack of a Police presence will mean that incidents which occur will not be promptly dealt with and that consequently the safety of the community, particularly of the elderly, will be compromised.

78 One of the Objects of the Act in section 3 to which the Tribunal must have regard under section 116(4) is *“to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries...having regard to the welfare, needs and interests of the community and the economic implications of change.”* In this context the present proposal seeks to add incrementally to the development of the liquor industry on Coochiemudlo and provide for both the present and future requirements of residents and tourists. The Tribunal acknowledges that the present population is marginal for the viability of the proposal and that a significant number of the residents and visitors do not share the desire of most Queensland communities for a local takeaway liquor facility. The Tribunal also acknowledges the genuine fear of objectors that their health and safety may be impacted by an increase in alcohol-related antisocial behaviour. However, we consider that the island population is not *“at risk”* and that the new Police facilities, conditions placed on the licence and the small scale of the proposal will enable the premises to operate without the adverse health and social impacts feared by the objectors.

79 Having had regard to the matters specified in sections 116(3) and (4) we are satisfied that approval of the general licence sought would be in the public interest.

Objections to the proposal

80 There is no doubt that a very significant level of opposition to the grant of a general licence at this location has been sustained for more than 10 years. Quirk DCJ in his town planning decision in 1996⁹ referred to the substantial opposition to the grant of town planning consent for a tavern on the site. When an application to the Division was made by the present applicant in 2002, 142 individual objections were received and a petition with 472 signatures was lodged opposing the grant of the general licence.¹⁰ The Director-General's briefing note states that, in response to the advertising of the present proposal there were 54 public objections containing 73 signatures and a petition with 459 signatures consisting of 301 signatures from residents and 158 from visitors. An analysis by the applicant's consultants indicates that some petitioners also submitted letters of objection and concludes that there were 424 petitioners of whom 219 were residents. Regardless of

⁸ Ibid. Appeal book p42.

⁹ P Reinhold: Memorandum dated 21 November 2006. Appeal Book p523.

¹⁰ P Reinhold: Memorandum dated 11 July 2007. Appeal Book p800.

precise numbers there is obviously a substantial up swelling of opposition to the grant of the licence.

81 In addition, there were objections to the proposal from Police, the Council, the local Member of Parliament, Mr John English MP, and a number of those interviewed in the community consultation process outlined in the Public Interest Assessment. Division officers also recommended that the application be refused. The basis for much of the opposition is amenity rather than public interest although issues relating to public safety, lack of a permanent Police presence and the possibility that the island will become a “*drinking*” destination were also raised.

82 Residents state that there is no public transport and there are no taxis on the island and that, as a consequence, drink driving will increase unhindered by any prospect of an RBT or of being apprehended by a Police patrol. Pedestrians will be at risk from such drivers as the area is poorly lit and there are no footpaths. The report by Holland Traffic Consulting¹¹ points out, however, that car usage on the island is very low and that residents are quite accustomed to walking around the area in the circumstances which exist. In their opinion, in the absence of a drive-through or bottleshop, the increased traffic flow due to the grant of a general rather than an on-premises (meals) licence is likely to be negligible. Whilst the report agreed that lighting was poor, it saw this as a positive benefit because, in poor lighting conditions, virtually no pedestrians could fail to observe the glare of car headlights. The re-opening of these premises, whether as an on-premises (meals) or a general licence, will inevitably cause some increase in pedestrian and vehicular traffic over that which exists at the present time. However, there is nothing in the evidence to suggest that we should not accept the assessment of the professional traffic engineer that there are no traffic planning grounds on which the application could be refused.

83 The applicant considers that its patrons will primarily be residents, holiday makers staying on the island, people in the boats which often anchor offshore on weekends and holidays and day trippers who can be expected to leave by late afternoon. While it is always possible that some day trippers might remain into the evening, it is considered unlikely that people would come across on the ferry specifically to drink until late when there are venues which stay open later, provide entertainment and are more easily accessible on the mainland. Potential problems caused by people missing the last ferry have already been addressed by the applicant’s undertaking to issue a warning to patrons when the departure of the last ferry is imminent and to provide a bus to transport patrons to it. The Tribunal considers these initiatives appropriate to allay the concerns of the objectors.

84 Mr English MP also points to the possibility that Coochiemudlo may become attractive to young people from the mainland who tend to act less responsibly on an island because they think that normal rules do not apply,¹² particularly as there is no permanent Police presence. Objectors have indicated that groups of young people already cause some concern on the island, but it is doubtful whether such a small venue without any entertainment would be sufficiently attractive as to draw young people who would not otherwise visit the island or that the convenience of purchasing alcohol from the island takeaway would outweigh the consideration that prices are likely to be much cheaper on the mainland because of competition between outlets. Nevertheless, in response to objectors’ concerns, the applicant is willing to accept restricted hours for the takeaway

¹¹ Holland Traffic Consulting: Report dated 31 October 2006. Appeal Book pp489-493.

¹² Craven Ovenden: op cit. Appeal Book p26.

facility to eliminate the possibility of late-night purchases for the purpose of partying on the beach or elsewhere.

85 It is always possible at any facility where the consumption of alcohol is permitted that patrons will behave, either inside or beyond the premises, in a manner which is disturbing and anti-social despite the best management practices and close attention to the responsible service of alcohol. In this regard, it is acknowledged in liquor licensing law and practice that general licences are "*higher risk*" than on-premises (meals) licences because of their ability to sell liquor without restriction by virtue of their primary purpose. It is the view of the objectors that it is more likely that problems on Coochiemudlo will go unchecked because it is an island, because of the lack of a permanent Police presence, the inevitable though short delay in a Police response and the likelihood that the Division's Compliance Unit would find it impossible to attend.

86 The Police state that they expect this general licence, if approved, to give rise to more calls for law and order offences than the small number they receive at present. Should problems arise, evidence before the Tribunal is that response times from the Police are now much shorter than they were in early 2006 because there has been a major upgrade of Police facilities. The Redland Bay Police Station, opened in April 2006, incorporates a dedicated Water Police Service operating a fast response vehicular barge from a base at Weinam Creek. Senior Sergeant Graham, Officer in Charge, said when interviewed in the course of the applicant's community consultation for the Public Interest Assessment, that the response time once the boat was manned was 15 minutes, which is not inconsistent with what one would expect in any mainland community. Naturally, as is the case anywhere in the State, whether a police presence is immediately available depends on the allocation of resources and the priority of the complaint. However, with the upgraded facilities it seems that the island is no more likely than any other community to experience difficulty in obtaining assistance should problems arise.

87 Concern was also expressed by the Council which said that it could not support the proposal "*based on available information*".¹³ It appears that, at the time of its response to the Division in August 2006, the Council had very little information regarding the proposal and the Tribunal doubts whether the Council was aware that the applicant proposed only a very small facility of 238m² utilising the existing building envelope. The Council expressed a willingness to reconsider its position on receipt of information about a variety of matters such as the proposed hours of operation, outdoor dining facilities, recreational areas and intentions regarding amplified entertainment but there is nothing in the material before us to indicate that this information was ever provided to the Council as a basis for fresh comment.

88 The views of the local authority must be accorded substantial weight, however Council objection in this instance is in general terms only, raising amenity issues with little supporting evidence and therefore cannot be accorded significant weight.

Amenity

89 The Tribunal must consider, pursuant to section 121(5)(f), any likely detrimental effects that the grant of the licence may have on the amenity of the locality. Objections from the Council, the Police and Division officers and members of the public focus on two relevant issues. Firstly they identify potential adverse impacts arising from noise generated

¹³ P Toohey: Letter dated 8 August 2006. Appeal Book pp125-126.

by the premises and its patrons. Secondly local objectors say that they have a subjective perception that the special character and amenity of the island will be diminished or destroyed by the grant of the general licence.

90 Noise issues were the subject of a Noise Assessment Report compiled by Mr Paul King, senior engineer, Max Winders & Associates.¹⁴ Mr King acknowledged that the island is quiet, with an average background noise level between 10:00pm and 7:00am of 36dB(A) with a minimum of 26.5dB(A) and a maximum of 49dB(A). Peak noise levels during the night averaged 46 dB(A). The Tribunal agrees with Officer Reinhold that this level is very low indeed, certainly very much lower than the ambient noise level to be expected in an average suburb.¹⁵

91 Mr King assessed the noise inside and immediately adjacent to the premises as being capable of control using acoustic barriers and the location of the carpark on the western side of the premises. He said that noise from plant and equipment would be within the limits established by the Council and that the noise from patrons on the premises would be similar to that from an on-premises (meals) licence. Mr King estimated that noise from small groups of patrons walking past the closest residences on their way to the ferry will generate noise levels in the order of 45dB(A) to 52dB(A) which is slightly in excess of desired levels and he recommended the provision of a courtesy bus to eliminate this problem. Not all patrons departing on foot will be going to the ferry; some will be making their way home or to accommodation on the island and any noise generated by these groups will intrude, not just into the residences near the premises, but more widely across the island. For this reason the Tribunal is of the view that, if this licence were to be granted, a courtesy bus should be provided not just for transport to the ferry, but for the transport of patrons to their accommodation as well.

92 The Tribunal notes that Mr King has qualified his conclusions with respect to amenity by saying they are based on patrons departing the premises in an orderly and well-mannered way. However, despite the most stringent measures adopted by management, even where security monitoring is provided, it is not possible to control the behaviour of patrons once they have left the premises. There may be occasions when patrons engage in loutish and anti-social behaviour, but even patrons who have simply enjoyed a pleasant evening without excessive consumption of alcohol may talk loudly, depart noisily and cause a large degree of disturbance, especially in a locality with extremely low ambient noise levels. In these circumstances it seems inevitable that there will be some adverse impact on amenity caused by patrons departing the premises though this will be reduced by the provision of a courtesy bus.

93 Residents and visitors describe Coochiemudlo as having a special character and identity deriving from its being a small, low density island community fringed by a beach. An essential component of its special character is its peace and tranquillity and objectors have a perception that this special character will be adversely impacted by a general licence in ways which are difficult to quantify with hard data. They believe that the tranquillity of the island and its lifestyle is a fragile quality easily destroyed by the accrued impacts of even a small general licence operating from existing premises. Where there is a very high level of public objection which has been maintained for many years the subjective perceptions of the residents cannot be lightly dismissed. Such perceptions have been recognised by the courts as a legitimate factor to be taken into account in assessing the impact of proposed developments on a locality.

¹⁴ P King: Noise Assessment Report dated 8 June 2004. Appeal Book pp485-488.

¹⁵ P Reinhold: Memorandum dated 21 November 2006. Appeal Book p759.

94 We are guided in that regard by what was said by de Jersey J (as he then was) in the Full Court in *Broad v Baptist Union of Queensland and Brisbane City Council* (1986) 2 Qd R 317 at 325:

“In determining the likely effect of the proposed development on the amenity of a neighbourhood, (the Court) is clearly entitled to have regard to the views of residents of the area. The question is whether a resident’s view should be disregarded where it appears to be purely subjectively based, with no suggested justification in objective, observable likely consequences of the establishment of the proposed use.

In my opinion such a subjective view need not necessarily be disregarded. Very often, of course, the evidence of such a view would be accorded little if any weight. In forming his own view of the likely effect of a proposed development on the amenity of an area, a judge would I think ordinarily prefer views from residents which find justification in specific, concrete likely effects of the proposed development.

But as I have said, I would not exclude evidence of more subjectively based views as being necessarily irrelevant although in the end the judge may well accord them little weight.”

95 The Tribunal has given due weight to the concerns of objectors, but it is necessary also to have regard to the validity of those concerns. The purpose of the objection process is to identify matters which are genuine issues. The process is not intended to be a form of referendum where the numbers of objections are conclusive. It is the substance of those objections which must be examined.

96 This application is for a small premises occupying an existing building which is already entitled to operate as an on-premises (meals) licence. There will be no late night trading, opening hours of the takeaway facility will be restricted and a courtesy bus will be provided. The premises has no extensive bar area, liquor barn or drive-through and no amplified entertainment. Its construction and operations are in keeping with the low intensity nature of other commercial premises on the island and with the character and scale of other developments. The total capacity of the premises is 94 and it seems unlikely to attract that level of patronage except possibly at holiday times and weekends.

97 In considering the impact upon the amenity of the Island of the proposed tavern for the purposes of town planning consent Quirk DCJ said at pages 13 and 14:

“Mr Holland gave what I considered a fair and useful assessment of the proposal in this way:

‘The proposal is for a small intimate tavern with a small parking area. The use is to occupy the existing building on the subject land (in conjunction with the existing restaurant). No extensive bar areas, liquor barn, drive through bottle shop or amplified entertainment is proposed as part of the use. As such it is considered to be in keeping with the low intensity nature of the preferred uses in the locality under the Development Control Plan, as well as in keeping with the general character and scale of development on Coochiemudlo Island.’

Much of what was said by the many objectors who gave evidence focussed upon the likelihood of disturbing and irresponsible behaviour and possible prejudice to physical

safety of residents (particularly children and the disadvantaged) by those adversely affected by alcohol. Regrettably, such behaviour does and will probably continue to occur from time to time wherever human beings are found. Whether this is a good reason for not allowing responsible residents of the Island who wish to do so to benefit from a tavern License is another matter entirely.

I am reminded of what I said in Bartlett Estates v Redland Shire Council & Ors 1986 QPLR 22 at 27

‘The possibility of behaviour on the part of some persons resorting to licensed premises which sober members of the community might find unacceptable or at least irritating simply cannot be ruled out. It is a factor which quite fairly, in my view, assumes importance in the minds of nearby residents who might be affected and calls for the closest attention to the selection of an appropriate site for such premises.’

I do not retreat from that. Had the proposal in this case been on a scale comparable to what was being considered in Bartlett’s case, the question of whether this is an appropriate site for such a development may have been answered very differently.

I have decided that it would, on the evidence given in this appeal, be quite unreasonable to the appellants to assess this proposal, not as it has been put forward, but on some far more substantial and troublesome scale. In the manner that it has been put forward I find it not inconsistent with the formal expressions of planning intent for the area.

I find, on the evidence, that the onus of showing that the application is one which, having regard to the relevant provisions of the Local Government Planning and Environment Act and the Town Planning Scheme is one which ought to be approved has been discharged.”¹⁶

98 The Tribunal shares the views of Quirk DCJ that, while there will be some amenity impacts, they will be minimised by the modest size of the premises. In our opinion, the perception of the objectors that the general licence will have a significant impact on the amenity of the locality and the special character of the island has been based on the experience of large, traditional hotels and taverns with multiple bars, entertainment, liquor barns and late night trading which would be quite inappropriate in this island setting.

Conclusion

99 In making a determination in this matter the Chief Executive and the Tribunal must balance the possible amenity impacts against the benefit to the tourism and liquor industries and the general public of having a small-scale facility which provides for drinking and socialising in pleasant surroundings as well as the convenience of a local facility for the purchase of takeaway liquor. In this case the Tribunal considers on the basis of the evidence before us that, while there will be an impact on the amenity of the locality, it will not be “undue” and that, on balance, with the imposition of appropriate trading conditions, the benefits outweigh the disadvantages.

¹⁶ Ogilvy & the Shire of Redland op cit. pp13-14.

100 Having considered all the matters to which we must have regard pursuant to sections 116 and 121 of the Act the Tribunal is satisfied that, on the basis of the evidence before us, a general licence should be granted to the applicant in respect of the premises.

Order

101 The Tribunal orders that:

1. The decision of the Chief Executive made on 26 September 2007 is set aside.
2. Approval is granted for a general licence in respect of premises known as Bayview on Coochie subject to compliance by the applicant, to the satisfaction of the Chief Executive, with any outstanding procedural requirements for the issue of a general licence.
3. The general licence is to be granted with standard trading hours and conditions and with the following additional specific conditions:
 - (a) takeaway liquor sales are restricted to 10:00am to 9:00pm Monday to Saturday and 10:00am to 7:00pm Sunday; and
 - (b) a courtesy bus will be provided
 - (i) to transport patrons to the ferry terminal in time for the last ferry departure to the mainland in the evening; and
 - (ii) to transport patrons at any other time to the ferry terminal or island accommodation when it is deemed that such transport is required to disperse patrons in an orderly manner.

MRS G SPENDER
MEMBER
Commercial and Consumer Tribunal

DR M O'DONNELL
MEMBER