

CITATION: Fine Fidelity & Ors v Commissioner of Liquor and Gaming & LA Showgirls Pty Ltd [2014] QCAT 89

PARTIES: Shane Kevin Potter trading as Fine Fidelity
Richard Mark Armitage
Jennifer Goodwin
Revival Ministries Australia Ltd
(Applicants)
V
Commissioner of Liquor and Gaming
LA Showgirls Pty Ltd
(Respondents)

APPLICATION NUMBER: GAR065-13

MATTER TYPE: General administrative review matters

HEARING DATE: 12 December 2013

HEARD AT: Brisbane

DECISION OF: **Presiding Member Howard
Member Paratz**

DELIVERED ON: 11 March 2014

DELIVERED AT: Brisbane

ORDERS MADE: **1. The decision of the Commissioner of Liquor and Gaming made on 18 January 2013 to grant an application for an adult entertainment permit is confirmed.**

CATCHWORDS: GENERAL ADMINISTRATIVE REVIEW – LIQUOR AND GAMING – ADULT ENTERTAINMENT PERMIT (AEP) – where large number of objections to grant of permit by members of the public-where local government and local assistant police commissioner objected to grant – where Commissioner of Liquor and Gaming granted the permit on conditions – whether combined total of licensed brothels and premises with AEP in the locality would substantially affect the character of the locality-whether red-light district – whether undue annoyance, disturbance or inconvenience to persons residing working or

doing business in the area – whether harm from alcohol abuse and misuse – whether adverse affect on health and safety of members of the public – whether an adverse affect on the amenity of the community

*Liquor Act 1992 ss 3,4, 33, 34, Part 4A
Division 6, 103Q, 103R, 103T, Part 5 Division 1,
107,107C, 107D, 107E, 107F, 109B, 117, 118,
119, 120, 121*

*Liquor Regulation 2002
Liquor (Approval of Adult Entertainment Code)
Regulation 2002*

*Queensland Civil and Administrative Tribunal
Act 2009 ss 19, 20*

*Bad Girls Maroochydore Pty Ltd v Chief
Executive, Office of Liquor & Gaming
Regulation [2004] QCA 45*

*Bad Girls Maroochydore Pty Ltd v Chief
Executive, Office of Liquor & Gaming
Regulation [2003] QSC 171*

*Bad Girls Maroochydore Pty Ltd v Chief
Executive, Office of Liquor and Gaming
Regulation (2002) (Liquor Appeals Tribunal)*

*Hanly & Anor v Chief Executive, Office of Liquor
& Gaming Regulation [2008] QCCTL 2*

*Potter trading as Fine Fidelity & Ors v
Commissioner of Liquor & Gaming &Anor.
[2013] QCAT 736*

APPEARANCES and REPRESENTATION (if any):

- FIRST APPLICANT:** There was no appearance by Mr Potter.
- SECOND APPLICANT:** Mr Richard Armitage represented himself.
- THIRD APPLICANT:** Ms Jennifer Goodwin represented herself.
- FOURTH APPLICANT:** Mr Paul Galligan and Ms Janet Galligan represented Revival Ministries
- FIRST RESPONDENT:** Mr Dominic Robinson, Counsel, instructed by the Commissioner of Liquor & Gaming, represented the Commissioner of Liquor & Gaming
- SECOND RESPONDENT:** Mr Matthew Jones from Liquor & Gaming Specialists represented LA Showgirls Pty Ltd

REASONS FOR DECISION

[1] This proceeding involves four applications for review of a decision of the Commissioner of Liquor and Gaming (the Commissioner) to grant an adult entertainment permit (AEP) in respect of licensed premises at Toowoomba. The applications for review were made by persons who objected under the *Liquor Act* 1992 (the Act) to the granting of the AEP. The licensee who holds the AEP was joined as second respondent. The 4 proceedings were consolidated.

[2] On 18 January 2013, the Commissioner granted an AEP to the second respondent (subject to a final inspection of the premises) for the hours 6pm to 5am Monday to Sunday on the following conditions:

The permittee must comply with the management plan submitted to the Office of Liquor and Gaming Regulation.

The permit does not authorise adult entertainment on Christmas Day or Good Friday.

The permittee must ensure that spruiking or touting for business does not occur outside or in the proximity of, the premises.

Sufficient lighting must be provided to ensure controllers can properly supervise the entertainment and patron behaviour.

The approved area must be fully enclosed in a way that prevents a person outside the area from seeing inside the area.

The permittee must keep and maintain an up-to-date daily register of the name of each controller, with each controller's starting and finishing time entered at the time of commencement and completion of duties as the premises as a controller respectively.

When adult entertainment is being provided under the authority of an adult entertainment permit, a licensee, permittee or controller must be present at all times, in all rooms and/or areas where the adult entertainment is being conducted to ensure that it is provided in accordance with the *Liquor Act* and all conditions of the permit.

Licensed crowd controllers are not permitted to perform duties as controllers at the premises whilst engaged to perform crowd control duties on Friday and Saturday nights only.

All exterior treatments to the premises must be kept subdued, using dark colours, with exterior signage being prohibited with exception to the business name and logo so as not to detract from the presentation of the overall street-scape.

Background

[3] LA Showgirls applied for a liquor licence, an extended hours trading permit (EHTP) and an AEP. The AEP application, although initially sought for longer hours (10am to 5am), was amended following an objections conference, to 6pm to 5am. The liquor licence and the EHTP were granted in December 2012. Those decisions have not been reviewed. The decision to grant the AEP was subsequently made in January 2013. It became clear at the hearing that the applicants or some of them did not

realise that the liquor licence and EHTP needed to have been separately reviewed if the Tribunal was also to consider them.

- [4] The licensed premises are located in the Toowoomba central business district (CBD), in a former Commonwealth Bank building. Toowoomba is Queensland's largest inland regional city. The premises are located at 368 Ruthven Street on a corner, at Ruthven Street's intersection with a one way street, Russell Street. It is uncontroversial that Ruthven Street is the main street in Toowoomba.
- [5] The proposed use is not prohibited by Council By-laws for Town Planning for the area.¹ There are no other AEPs granted for Toowoomba premises. The premises are located in a designated extended trading hours precinct under the *Liquor Act 1992*, one of 12 in Queensland, where trading hours after midnight may be considered. It is the only designated extended trading hours precinct in Toowoomba. There are five other licensed premises in the Toowoomba CBD, with licenses which allow some of them to trade until 3am on weekdays, and some until 5am on weekends.²
- [6] The local planning scheme allows for a number of uses. Residential use is not excluded, but, contrary to submissions by one objector, the available evidence does not reveal residences currently located in the CBD.³ Commercial and retail premises, community facilities and 5 other licensed late night venues are located nearby.⁴ Next door to the licensed premises is a commercial tenancy, *Fine Fidelity*. Next door to Fine Fidelity is the regional Leukemia Foundation premises. Across the road, is the Kath Dickson Family Centre which provides playgroup for pre-school-aged children during the day on Mondays and Wednesdays.
- [7] On the diagonally opposite corner is Lifeline, which offers, among other services, counselling and support services for family issues, addiction, and domestic violence. The hours during which counselling is offered are variable depending on availability of counsellors and demand,⁵ but generally conclude by 6pm.⁶ At latest, in the past they had concluded by 7 or 7.30pm.
- [8] The Shiloh Centre, the closest place of worship, is located about 120 metres⁷ away around the corner in Russell Street. It holds sessions most days and one evening per week. Also nearby is the Vision Community

¹ Exhibit 1, 1458.

² One of the premises, The Powerhouse Night Club, has not traded since 2010, due to flood damage, but remained licensed.

³ Although it may be that overnight or short-term accommodation is offered in, for example, the Metropole Hotel. If, as was submitted, the evidence is deficient, it does not appear that any person alleged to reside in the CBD lodged an objection.

⁴ Although one is not currently trading: see Footnote 2 above.

⁵ Exhibit 1, 1504 where it is noted that variously 7.30pm, and 7pm had also been advised finishing times.

⁶ Exhibit 1, 1504.

⁷ In submissions, Mr Galligan asserted that it was 90m away, but the evidence including the objection provided by Revival Ministries itself (p509 of Exhibit 1) suggests it is 120m away.

Church (about 200m), Personnel West Youth Employment Service for young persons with disabilities, substance abuse issues or from disadvantaged circumstances. iPlay café is nearby in Ruthven Street: it caters for parents and children, mostly under 8 years. Also in Ruthven Street, Foundations Child and Family Support offers refuge for abused and neglected children to 18 years.

- [9] There is one licensed brothel in Toowoomba some 3.17 kms from the premises. There are 3 adult stores, one of which is located nearby at 478 Ruthven Street. There is another online adult business operated in the area. Classified advertisements for various escort, stripper and other services available in Toowoomba suggest an active local adult or sex related industry.⁸
- [10] It is uncontroversial that a very large number (described as an unprecedented number by an officer on the Commissioner's staff)⁹ of objections were received by the Commissioner. The precise number has not been tallied by any party, but it is acknowledged to be in excess of 3000. There were some 27 individual letters to the Commissioner about the AEP alone; another 27 about the grant of the liquor and EHTP as well as the AEP; three petitions respectively with 2046, 1156 and 1751 petitioners. It appears that there may be some overlap between the latter 2 petitions which are e-petitions.
- [11] In addition to the objections from members of the public, the local authority objected, as did the Assistant Police Commissioner for the local area, the local Member of Parliament and the Toowoomba Chamber of Commerce.
- [12] The objectors who review the Commissioner's decision to issue the AEP submit that the objections were not taken into account by the Commissioner in granting the AEP.
- [13] The Tribunal received written submissions from each of the 4 applicants, as well as both respondents. The parties, except for Mr Potter,¹⁰ also attended the hearing and provided oral submissions. The Tribunal had before it the evidence which was before the Commissioner when the decision was made by him. To the extent that any new evidence was attached to the written submissions or included in the oral submissions by any party, it has not been taken into account.¹¹

⁸ Exhibit 1, 1311-1341.

⁹ Exhibit 1, 1506.

¹⁰ Mr Potter made application to attend the hearing by telephone but his application was refused as set out in separate written reasons dated 3 December 2013 of Member Howard: *Potter trading as Fine Fidelity & Ors v Commissioner of Liquor & Gaming & Anor* [2013] QCAT 736.

¹¹ *Liquor Act* 1992 provides that a review must be on the evidence before the Commissioner when the decision was made, unless the Tribunal gives leave to present new evidence: ss 33, 34. Leave has not been granted for new evidence in this proceeding.

The review process

- [14] The Tribunal has jurisdiction for the review under the *Liquor Act* 1992 and the *Queensland Civil & Administrative Tribunal Act* 2009. The review must be conducted in accordance with the law that applied to the making of the original decision.¹² The *Liquor Act* 1992 has been amended since the decision was made. The reprint current as at 1 January 2013 is the relevant version of the *Liquor Act* 1992 and all references to it in these reasons for decision are to that version unless otherwise stated.
- [15] The Tribunal's role in review proceedings is to make the correct and preferable decision¹³ on the evidence before it and according to law, after a fresh hearing on the merits.¹⁴ For the purposes of the review, the Tribunal stands in the shoes of the original decision-maker.¹⁵

The legislative scheme for adult entertainment permits

- [16] Part 4A Division 6 of the *Liquor Act* 1992, the *Liquor Regulation* 2002, the *Liquor (Approval of Adult Entertainment Code) Regulation* 2002 set out provisions relevant to AEPs specifically. Where adult entertainment is provided, the area must be fully enclosed so that persons outside the area can not see in: s 103Q. An AEP may not be granted for a term of more than one year, unless sooner surrendered, suspended or cancelled: s103R. An AEP may only be granted, if in favour of a licensee, for the main premises under a licence: s103T.
- [17] The requirements for the grant of licences and permits set out in Part 5 Division 1 apply to the process of making application and consideration of an application.
- [18] There are provisions about restrictions on granting an AEP (s 107D); assessing the suitability of an applicant for an AEP (ss 107, 107E); referring the application to the police commissioner to obtain the commissioner's report (s 107F); controllers for a licensee with an AEP (s 109B); requirement to advise the local authority and the assistant police commissioner for the locality (and for them to comment or object) on an application for an AEP (s 117); requirements for advertisement (s 118, s 118(1)(d) refers to AEPs); the process and grounds for members of the public to object, individually and by petition (ss 119, 120; for an AEP see s 119 (4) in relation to the grounds for objection).
- [19] Section 121 sets out matters to which the Commissioner (and on review the Tribunal) must have regard in deciding whether to grant the application. Under s107C, conditions may be imposed on licences and permits.

¹² *Liquor Act* 1992 s 33(1)(b).

¹³ QCAT Act s 20(1).

¹⁴ QCAT Act ss 20(2), 19.

¹⁵ QCAT Act s 19(c).

- [20] Section 107D(1) provides, among other things, that the Commissioner may grant an AEP *only if* the applicant is a suitable¹⁶ person; and only if, if the application was granted, that the total number of licensed brothels and premises with AEP permits in the locality *would not substantially affect the character* of the *locality*. The Commissioner must have regard to any comments of the local authority and the assistant police commissioner: s 107D(2).
- [21] In any circumstances when an application must be advertised under s 118, any member of the public may object.¹⁷ Section 119(4) limits the grounds upon which a member of the public may object to an EAP. It provides that there are only 4 grounds, namely the prospect of *undue* annoyance, disturbance or inconvenience (to persons residing, working or doing business in the locality, or persons in, or travelling to and from a place of worship, school, hospital or other facility regularly frequented by children for cultural or recreational reasons); harm from alcohol abuse or misuse and associated violence; an adverse affect on health or safety of members of the public; and an adverse effect on the amenity of the community.
- [22] Amenity of a community or locality means the atmosphere or character and comfort or enjoyment derived from it: s 4. '*Member of the public*' is defined as an individual or body of persons with a proper interest in the locality, likely to be affected by the grant of the application.¹⁸ Although LA Showgirls made submissions about who is a member of the public, they stopped short of submitting that any of the objectors did not fall within the definition of member of the public.
- [23] Under s 121, in deciding whether to grant an application, the Commissioner must have regard to the matters set out. For an AEP, the relevant matters are the objections made; comments from the local government; comments from the assistant police commissioner for the locality; and the impact on the amenity of the community concerned.¹⁹

The requisite procedural steps for the AEP application

- [24] No issues arise from the material or submissions before us that the general procedural requirements for the application have not been met or followed. We do not discern any issues in this regard.
- [25] We observe that the Commissioner in granting the AEP imposed conditions, which he submits are responsive to objections made.

¹⁶ *Liquor Act* 1992 s 107E provides for the consideration of specified matters in determining suitability.

¹⁷ *Liquor Act* 1992, s 119(1).

¹⁸ *Liquor Act* 1992, s 119(5).

¹⁹ Various other requirements are set out in section 121 but they do not apply to applications for AEPs.

The comments by the local authority and the assistant police commissioner

- [26] The local government authority objected to the AEP because it is in a mixed use area; could adversely affect Toowoomba's family friendly environment; and could adversely impact the amenity of surrounding businesses. It was also concerned that granting one AEP may lead to a proliferation of AEPs in Toowoomba which would substantially affect amenity. It commented that if the AEP was granted, it should only operate during hours that the other businesses and facilities in the area are closed.
- [27] The Assistant Police Commissioner objected to the AEP on the basis of the sub-communities operating in close proximity offering child care, disability services, support services and places of worship. Some issues about suitability of the licensee were also raised.

The objections made under s 119(4)

- [28] In their submissions to the Tribunal, the objectors have referred to matters raised in objections made by other persons or entities, for example, Lifeline, although the focus was generally on their own grounds for objection. In any event, it is common ground²⁰ that although only 4 objectors have applied for review, that all objections are relevant on the review.²¹ There are some common themes among the objections.
- [29] Unlike the provisions about objections to licences and permits other than AEPs, undue offence is not a ground for objection to an AEP: s 119(3) sets out the grounds for objection to applications other than for an AEP and s 119(4) sets out the grounds of objection to an AEP application. Therefore, the Commissioner submits, objections on moral grounds to the concept of premises with an AEP are not permitted.
- [30] As the Commissioner submits, the provision of adult entertainment is lawful under the *Liquor Act*: its primary purposes include regulating the provision of adult entertainment.²² We are satisfied under the Act as made by Parliament which must be applied on this review, that objections made to the effect that an objector is morally opposed to and/or morally offended by activities of AEP are not valid objections under the Act.²³ Therefore, objections made to the effect that moral objection or offence is taken by the objectors are disregarded.

²⁰ The Commissioner made submissions to this effect, and no party submitted otherwise.

²¹ The objections are located at Exhibit 1, 218-1150.

²² *Liquor Act* 1992, s 3(f).

²³ A similar approach was taken in *Bad Girls Maroochydore Pty Ltd v Chief Executive, Office of Liquor and Gaming Regulation* (2002) (Liquor Appeals Tribunal); and *Hanly & Anor v Chief Executive, Office of Liquor & Gaming Regulation* [2008] QCCTL 2.

S 119(4)(a) Undue annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality or travel to/from facilities regularly frequented by children for cultural or recreational activities

- [31] Issues were raised about parking by objectors, for themselves and other members of the public, attending the area in order to attend local business premises, or using the local services or attending places of worship, on the basis that there is limited parking available in the immediate vicinity. Other issues relate to a lack of public transport after early evening and a single taxi rank in front of the premises (where frustration caused by waiting in line may lead to alcohol fuelled violence).
- [32] Numerous objections are made on the basis of the proximity to nearby facilities and services, such as Lifeline and places of worship, the business of which is not in keeping with an AEP premises. Other concerns relate to deliveries of alcohol being transported up the street some 50m from the nearest loading zone. Concerns are raised about disturbance and inconvenience associated with undesirable encounters with intoxicated persons.
- [33] Mr Potter, one of the applicants, operates a family-owned business, a home entertainment retail outlet, from premises next door to the licensed premises. His objection²⁴ describes anticipated annoyance and inconvenience in respect of use of his 4 private parking bays at the rear of the building by patrons and staff of the premises; and deliveries of alcohol. He also says that the majority of his customers are families with young children who are encouraged to bring their children to the store as it has a children's play area. He is concerned that customers will be less likely to attend the store if they are not comfortable to bring their children. Customers have told him that if the premises are next door, they will avoid his store, causing disturbance to his business.
- [34] He raises concerns about sensitive sites and facilities in the area, including Lifeline, the Shiloh Centre, the Kath Dickson Family Centre and iPlay Café which variously cater for and/or offer services to persons in crisis or with mental health or addiction issues, for worship and counselling and for children experiencing undue disturbance and inconvenience. He also raises an issue about the potential for disturbance by way of violence at taxi lines from persons under the influence of alcohol, noting that there is a single taxi bay outside the premises.
- [35] Mr Galligan and Mrs Galligan operate Revival Ministries²⁵ from the Shiloh Centre which around the corner in Russell Street. They offer counselling services, bible study and services on a variety of days during the week and school holiday programs. Regular sessions run on one weekday evening from 7pm to 9pm. Many of the persons who attend are families.

²⁴ Exhibit 1, Objection and submission at 317-321 (plus attachments) and 899-907.

²⁵ Exhibit 1, Objection at 509-513.

- [36] They are concerned that their attendees will be reluctant to attend at the Church, as they must drive past the premises (Russell Street is a one way Street) to access the Church. They point to limited parking in the area, which may mean attendees must park elsewhere and walk past the premises, which may discourage persons from attending the Shiloh Centre. Also, they suggest that a lack of public toilets may lead to an increased risk of urination in public places in Ruthven and Russell Streets.
- [37] Mr Armitage objects²⁶ that because of the central position of the premises, close to many sensitive sites, that undue annoyance, disturbance or inconvenience will result and that parking issues are likely to arise in this area where parking is already at a premium. Mr Armitage made submissions about the potential for disturbance to counselling sessions offered by Lifeline, if an AEP premises is able to operate in the area.
- [38] Ms Goodwin's objections²⁷ are essentially about the lack of congruence between what she describes as Toowoomba's family friendly and educational focus, and the AEP.

S 119(4)(b) Harm from alcohol abuse and misuse and associated violence

- [39] Issues are raised about the increased risk to persons in the area from alcohol related violence, including frustration caused by persons waiting in the single taxi bay in front of the premises.

S 119(4)(c) An adverse effect on the health or safety of members of the public

- [40] Mr Potter (and the Galligans, as well as other objectors), raise concerns that patrons of the premises (which is enclosed and so it is postulated will not have a designated smoking area) smoking nearby as having an anticipated adverse effect on health and safety, as well as risks to safety from patrons who are under the influence of alcohol leaving after hours and the lack of available public transport proximate to the premises.

S 119(4)(d) An adverse effect on the amenity of the community

- [41] The 4 applicants and many other objectors raise concern that the granting of the AEP will significantly adversely affect the amenity of the community.
- [42] Broadly, they say that Toowoomba is recognised as a family-friendly city and that adult entertainment is not in sympathy with Toowoomba. Some of the applicants also submit that it is recognised as a city with Christian values. It was submitted that the Town Plan provides for residential accommodation in the CBD. The objectors are concerned that premises operating an AEP will fundamentally change the character, ambience and atmosphere of Toowoomba and the CBD. The concern is also raised that that allowing one such premises will lead to a flow-on effect of other such permits being granted.

²⁶ Exhibit 1, Objection at 897-898.

²⁷ Exhibit 1, Objection at 225.

- [43] Mr Potter and others are concerned that the heritage style ambience of the block in which the premises is to be located will be affected and it will diminish the character and enjoyment of community events such as the annual Carnival of Flowers parade which marches past the building in which the AEP premises are to be located.

Considerations and restrictions in deciding whether to grant the application

- [44] As set out earlier, s 121 sets out the matters which must be considered in deciding whether to grant an application. Those relevant to an AEP are the objections made; comments from the local government authority; comments from the assistant police commissioner for the locality; and the impact on the amenity of the community. For an AEP application, additional restrictions are imposed by s 107D, which requires that the application may be granted *only if* other specified requirements are met.

- [45] The issues referred to in these sections are separate and distinct, and may be considered in any order.²⁸

[46] Section 107D restrictions

- [47] We have considered the matters set out in s 107D. We do not discern any issues in relation to the matters specified in s 107D(1)(c) and (d) and nor were any raised by any party.

[48] Suitability: s 107D(1)(a)

- [49] Submissions were made about the suitability of the second respondent's director, Ms Doukari, by some of the applicants for review. They submit that Ms Doukari is not a suitable person. However, grounds for objection do not extend to such matters (and nor did the objections made relate to suitability issues).

- [50] The second respondent contends that the objectors are not competent to raise issues about suitability merely because they are entitled to review the decision of the Commissioner as a consequence of having validly objected. It relies on *Magin v Commissioner, Office of Liquor & Gaming Regulation & Anor.*,²⁹ in which the Tribunal considered that the Tribunal can not be used as a roving Royal Commission by objectors who were entitled to object only on a limited basis.

- [51] It is apparent from a consideration of the relevant sections of the *Liquor Act 1992*, that objectors are entitled to have only limited issues considered in raising objections to an application. An objector is entitled under to s 30 of the *Liquor Act 1992*, to apply for review of a decision if the person is aggrieved by the decision. Are objectors entitled, in circumstances when

²⁸ *Bad Girls Maroochydore Pty Ltd v Chief Executive, Office of Liquor & Gaming Regulation* [2003] QSC 171, [12] where McKenzie J discusses the equivalent provisions of the *Liquor Act 1992* applicable at the relevant time.

²⁹ [2013] QCAT 196.

they exercise a right of review, to make submissions about issues about which they were not entitled to comment (or, in any event, not entitled to have those comments considered if raised) in an objection?

- [52] There is some logic to the argument that objectors are limited on review to making submissions about the manner in which objections have been treated by the Commissioner. It seems questionable whether objectors could be aggrieved by the decision, as far as it does not concern treatment of their objections. That said, it does not appear from decided cases that limitations have been placed on those matters about which objectors may make submissions on review. However, the purpose of the review under the QCAT Act is to make the correct and preferable decision, and other than the limitations about the manner in which reviews are to be conducted which were discussed earlier, there is no specific provision in the *Liquor Act* 1992 circumscribing the nature of the review to be undertaken when instigated by objectors. As a matter of statutory interpretation, should the limitations suggested by LA Showgirls be imposed on submissions which the objectors can make on review?
- [53] Ultimately, we do not need to decide this question. The Assistant Police Commissioner for the locality raised some issues about suitability. However, irrespective of the submissions made by the objectors and the comments of the Assistant Police Commissioner for the locality, we are satisfied having regard to the legislative requirements and the available material including the probity report (which annexes a report later compiled by the Assistant Police Commissioner, State Crime Operations Command, following investigations into suitability by the Prostitution Enforcement Task Force),³⁰ that there is no basis to consider the licensee unsuitable.

Character of the locality: s 107D(1)(b)

- [54] Pursuant to s 107D(1)(b), we must consider whether, as a result of granting the application, the combined total of licensed brothels and premises allowed to provide adult entertainment in the locality would substantially affect the character of the locality. An example is given of a locality being substantially affected if it becomes a red light district.
- [55] *Locality* is not defined and nor is *character*. *Amenity* of a community or locality is defined to include the character of the community or locality.³¹ *Amenity* encompasses a broad range of matters, including atmosphere ambience, character and pleasantness³² which may include subjective perceptions.³³ *Character* has been held to include the nature and appearance of the locality as well as the activities carried on in it.³⁴

³⁰ Exhibit 1, 1491-1501.

³¹ *Liquor Act* 1992, s 4 definitions, amenity.

³² *Liquor Act* 1992, s 4 definitions, amenity.

³³ *Bad Girls Maroochydore Pty Ltd v Chief Executive, Office of Liquor & Gaming Regulation* [2004] QCA 45.

³⁴ *Bad Girls Maroochydore Pty Ltd v Chief Executive, Office of Liquor & Gaming Regulation* [2003] QSC 171, [14].

However, at the time of that decision character was considered a more abstract concept than amenity.³⁵ The *Liquor Act* 1992 was subsequently amended to include the definition of amenity referred to. Therefore, it seems that character is now a more limited concept than amenity.

- [56] The Commissioner submits, relying on decided cases,³⁶ that locality is a narrower concept than community (which may include the people). It is more localised, it submits than Toowoomba. It submits that the locality is the immediate area, in this case, the Toowoomba CBD.
- [57] The CBD is an area distinct from other areas in Toowoomba, by virtue of its mixed use. It is characterised by a variety of services, commercial businesses and entertainment venues. It is distinct from areas which may be designated for residential or industrial uses. We are satisfied that the locality is the Toowoomba CBD.
- [58] Will the character of the Toowoomba CBD be substantially affected by the grant of an AEP, (having regard to the combined total of licensed brothels and AEP premises in the locality)? It has been held that granting even one AEP may, in appropriate circumstances, substantially affect the character of the locality.³⁷
- [59] We are satisfied that there is no other premises operating an AEP in the locality. There is no licensed brothel in the CBD. There is a licensed brothel in Toowoomba, but it is over 3 kms away, not in the locality. We must consider the comments of the local government authority and the assistant police commissioner. The local authority's comments include a concern about adverse effect on surrounding businesses. Its objections relate to a family friendly environment, the possibility of increased alcohol fuelled violence, and concerns about the possibility of a proliferation of AEPs.
- [60] The impact on the character of what is said to be a family friendly environment must be viewed in the context of the locality, that is, the Toowoomba CBD which has mixed uses and includes a nightclub precinct.
- [61] The Commissioner's experience, as recorded in the evidence before the Tribunal, does not support the likelihood of a proliferation of AEPs. We accept that were 25 AEPs in 2004, and in November 2012, there were still 25.³⁸ Further, we accept that the Commissioner's general experience has been that AEP premises tend to generate a lower number of violent

³⁵ *Bad Girls Maroochydore Pty Ltd v Chief Executive, Office of Liquor & Gaming Regulation* [2003] QSC 171, [18].

³⁶ For example, see *Bad Girls Maroochydore Pty Ltd v Chief Executive, Office of Liquor and Gaming Regulation* (2002) (Liquor Appeals Tribunal); *Hanly & Anor v Chief Executive, Office of Liquor & Gaming Regulation* [2008] QCCTL 2.

³⁷ *Bad Girls Maroochydore Pty Ltd v Chief Executive, Office of Liquor & Gaming Regulation* [2003] QSC 171, [10].

³⁸ Exhibit 1, 1508.

incidents, perhaps because of greater security ratios and supervision levels.³⁹

- [62] The Assistant Police Commissioner's comments relevant to this issue relate to the close proximity of the premises to child care, disability and other support services and places of worship. However, the AEP is sought for hours during which these other facilities are not generally operating. The comments must be considered in this light.
- [63] In respect of the character of the Toowoomba CBD, we are satisfied that it is a mixed use area and a designated extended hours trading precinct in which there are other licensed premises with long trading hours. These co-exist with community facilities and commercial businesses. There is currently no residential accommodation within it, although it is not precluded under the town plan. An adult shop trades nearby.
- [64] Would the addition of a club with an AEP which may provide AEP for the most part outside of the usual operating hours of local community services, and retail and commercial businesses, substantially affect the character of the locality? The applicants submit that it would, because it is in a prominent position, and is part of a red light district. They argue that the circumstances are not dissimilar to the circumstances in the *Bad Girls Maroochydore* decision. However, in that case, the local government stated that an AEP would be in direct conflict with its strategic plan and planning intent for the precinct.
- [65] It is apparent that the Toowoomba CBD already accommodates a variety of uses. An AEP premises does not conflict with the uses. We are satisfied that it is not and would not become a red light district because of the grant of the AEP. It is already a nightclub precinct because of its extended trading hours designation and other licensed premises operating in the area. The community facilities and commercial and retail businesses for the most part operate outside of the usual operating hours of the times for which the AEP is sought. We are not satisfied on the material before us that the character of the locality would be substantially affected by the grant of an AEP.

The Section 121 considerations

- [66] We have considered the relevant matters set out in s 121 of the Act.

Section 121(1)(b): the objections under s 119(4)

- [67] The AEP is sought for 6pm to 5am. The hours during which the local businesses, services and places of worship operate are for the most part outside of these hours. The Kath Dickson Centre offers playgroup during the day on Mondays and Wednesdays. Lifeline's last counselling session concludes at 6pm, although it seems from time to time that this may extend to 7 or 7.30pm. There is no evidence about the hours of High

³⁹ Exhibit 1, 1509.

Fidelity or the Leukemia Foundation. The Shiloh Centre offers many services, but the evidence⁴⁰ before the Tribunal is that these, with the exception of one weekly evening bible study group, are provided during the day.

- [68] Parking and taxi access is raised as an issue. There is a single taxi zone directly outside the premises. There is a multi-taxi rank also in the same block, outside of the Toowoomba Sports Club which ceases trade at 2am. In any event, as the intended hours of operation of the businesses and community facilities in the CBD largely do not coincide with the AEP, we are not satisfied that the parking and taxi access issues raised are made out in respect of the granting of the AEP. Parking spaces used by persons doing business or working in the area continue will to be available, for the periods outside of the operation of the AEP and AEP patrons may then use them at other times.
- [69] There are issues raised about loading zones and transporting liquor to the licensed premises. These premises already have a licence which is not the subject of this review. The issues do not amount to a sustainable objection that the AEP may result in undue annoyance, disturbance or inconvenience.
- [70] There is concern raised that having to drive past or walk past the premises will deter persons from attending the Shiloh Centre and businesses such as Fine Fidelity. Given the strict legislative controls which require that nothing inside the AEP premises be visible from outside, and that the conditions imposed prohibit spruiking or advertising outside the premises, it appears, as the Commissioner submits, that the objection is in respect of the mere existence of the AEP premises. While we accept that some objectors may because of their moral views be personally annoyed and offended by the existence of an AEP, under the *Liquor Act 1992* objections on moral grounds may not be taken into account in deciding the application on the AEP.
- [71] Applying the legislation, we are not satisfied that the existence of an AEP premises operated discreetly in accordance with the strict requirements of the legislation and in accordance with the conditions which the Commissioner has imposed will cause undue annoyance, disturbance or inconvenience.
- [72] Objection is raised concerning the risk for other persons using the area of increased alcohol-fuelled violent incidents involving patrons, including violence which may be occasioned by frustration when waiting for taxis in the single bay outside of the premises. Risk of property damage is also raised. As discussed earlier, there is another taxi rank about 50 metres away, outside of the Toowoomba Sports Club. Further, although the potential for increased numbers of violent incidents cannot be discounted

⁴⁰ We note that Mr Galligan made submissions about more extensive out of business hours services, but as leave was not granted for new evidence to be relied upon, this can not be taken into account.

altogether, the evidence about the Commissioner's experience suggests, and we accept, that violence is more likely to be associated with mainstream nightclubs rather than AEP clubs. Also, the persons attending the area to use community facilities and to shop will do so outside of the hours during which the second respondent applies for the AEP to operate.

- [73] We accept that the locality, with its concentration of licensed premises with extended trading hours permits, experiences violent incidents. We are not satisfied however on the basis of the material before us, that there is significant potential for increased unwanted interactions and violent incidents as a result of the AEP, between persons working shopping and doing business in the area. Therefore, the objection is not made out.
- [74] Objections on the basis of an adverse effect on health and safety of members of the public through smoking by patrons of the AEP premises, and as a result of concerns about safety generally through unwanted interactions similarly fail, given that the hours of operation of the AEP for the most part do not coincide with the hours of other persons working, shopping and doing business in the area.
- [75] Finally, we consider the issue of the effect on amenity of the community. Community is a broader concept than locality. It may, in an appropriate case, encompass the perceptions of residents about their community, although ultimately little weight, if any, may be accorded to purely subjective feelings.⁴¹
- [76] The objectors, and the local government authority, refer to Toowoomba's family friendly reputation. They submit that an AEP is not in keeping with it, and that its presence will fundamentally change the character, ambience and atmosphere of Toowoomba. Some objectors also refer to a Christian philosophy.
- [77] The family-friendly and Christian reputation and philosophy, which is relied upon in making the submissions, has, it seems, been fostered and/or maintained, despite the presence of other adult style entertainments in Toowoomba. As discussed earlier, the CBD has an active night club precinct. Toowoomba has a licensed brothel. There are numerous adult stores. The classified advertisements refer to other available adult industry type services.
- [78] The heritage-style ambience of Toowoomba was also specifically raised in objection. In particular, the carnival of Flowers Parade annually marches past where the premises are to be located. However, the premises external appearance must be subdued and discreet. There is no evidence to suggest that there will be significant effects on the amenity as a result of the presence of the premises in the former bank building itself.

⁴¹ *Broad v Brisbane City Council & The Baptist Union of Queensland* [1986] 2 Qd R 317, especially at 325.

- [79] We are not satisfied that an AEP premises in the CBD will fundamentally change the atmosphere, character and ambience of Toowoomba. Further, we are satisfied that the submissions about concern about a flow-on effect, and that more AEP licences may be granted for the area, are not borne out by the Commissioner's experience as discussed earlier.
- [80] Having regard to these matters, we are not satisfied on the material before us, that the mere existence of an AEP premises which must operate discreetly in the manner outlined earlier in order to comply with the *Liquor Act 1992* and according to the conditions of the permit, will have a significant adverse impact on the amenity of the community.
- [81] Therefore, we are satisfied that the objections raised do not warrant the refusal of the AEP.

Comments of the local government authority and assistant police commissioner: s121(1)(c) and (d)

- [82] These comments have been discussed in considering the s 107D restrictions. They are also similar in many respects to the objections made by members of the public.
- [83] The local authority's comments echoed objections that an AEP premises could adversely affect Toowoomba's family friendly environment; and could adversely impact the amenity of surrounding businesses. It was also concerned that granting one AEP may lead to a proliferation of AEPs in Toowoomba which would substantially affect amenity. These issues have been discussed in considering the objections of members of the public. For the reasons discussed, we are not satisfied that they are a basis for refusing the AEP.
- [84] The local government also commented that if the AEP was granted, it should only operate during hours that the other businesses and facilities in the area are closed. The application was amended only to seek the AEP during the hours that most businesses and facilities do not usually operate.
- [85] The Assistant Police Commissioner's comments about suitability of the licensee have been considered earlier. The remaining comments are about sub-communities operating in close proximity to the premises offering child care, disability and support services and places of worship. We accept that these services and facilities operate in the area. However, the AEP is largely sought for outside of the hours during which they operate. We are not satisfied they provide a basis for refusing the AEP.

Impact on the amenity of the community: s 121(1)(f)

- [86] Although amenity of the community has already been discussed in considering the objections of members of the public made on the basis that there would be an adverse effect on amenity of the community,

s 121(1)(f) separately requires that regard must be had to the impact on the amenity of the community.

- [87] At this stage, we are considering an initial application for an AEP. The Commissioner has been responsible for considering applications for AEPs now for over 10 years and has built up a body of evidence and experience about such premises and the manner in which they do generally affect communities. It was submitted by the applicants that this was irrelevant because Toowoomba is unique. While we accept that each community is different, the evidence of the Commissioner's experience is relevant evidence. The grant of the permit is for a maximum of one year, after which, there will have been the experience of a period of operation which may be considered if a reapplication is made.
- [88] The premises concerned are in the CBD, in an entertainment precinct which already has a number of licensed premises within it. Although the Commissioner's experience is that AEP premises generally tend to be less prone to experience incidents of alcohol related violence, the possibility can not be discounted altogether that there may be incidents at or near the premises. If these occur during the hours of operation of the AEP, those persons using the nearby community and commercial facilities are unlikely to be affected. More entertainment premises in the city may place pressure on transport and parking facilities, but persons attending in respect of the AEP, would largely do so outside of the hours when the community services and commercial businesses (other than some other licensed premises) usually operate.
- [89] We accept that many persons in Toowoomba attribute it with a family-friendly atmosphere and some with a Christian philosophy, but if it exists, it has developed alongside and co-existed with a licensed brothel, adult shops, and other adult entertainment and escort services that already exist in the Toowoomba community.
- [90] We acknowledge that there will be occasions when the hours of operation of some services and other businesses sometimes coincide with the operation of the AEP to some extent. However, the concerns about the effect on amenity are substantially addressed if the permit generally operates during hours during which the surrounding community services and retail and other commercial businesses do not generally operate and in accordance with the conditions imposed by the Commissioner. We are satisfied that operating hours of 6pm to 5am for the AEP meets this objective.
- [91] We are not satisfied that the grant of an AEP operating largely outside of usual operating hours of services/facilities and most businesses in the locality of the AEP premises in the CBD will unduly impact on the amenity of the Toowoomba community.

Conclusions

- [92] Having considered the relevant matters, we are satisfied that the granting of the AEP on the conditions imposed by the Commissioner is in accordance with the *Liquor Act 1992*.
- [93] We make orders confirming the decision of the Commissioner.
- [94] We note that a non-publication order was made in this proceeding on 9 September 2013, prohibiting the publication of various information and pages of the documents in the bundle of documents provided by the Commissioner which is now marked Exhibit 1 in the proceeding.