

## Delegate's Report

**Application No:** 2020/306

**Application Type:** Use Only

**Received:** 17 September 2020

**The Applicant:**  
 Name: Luciza Pty Ltd  
 Address: PO BOX 609, Morwell VIC 3840

**The Proposal:**  
 Proposal: Use of land to sell liquor

**The Land:**  
 Land Address: 70 Commercial Street Korumburra VIC 3950  
 Land Description: CA 1F S2 Parish of Korumburra Township  
 Zone/s and Overlay/s: Commercial 1 Zone

**Assessment:**  
 By: Robyn Begg

**Description of Proposal:**  
Planning Scheme and/or Planning and Environment Act Definition  
 Sell Packaged Liquor

Proposal

The application is to sell packaged liquor at a new premise. A Planning Permit is triggered to sell packaged liquor if there is no licence issued prior to 8 April 2011 in accordance with Clause 52.27 – Licensed Premises.

The applicant is proposing to convert an old service station at 70 Commercial Street Korumburra into a drive thru bottle shop. Access to the abutting Road Zone Category 1 (Commercial Street) requires not changes or upgrades. The proposed internal works and Business Identification Signage do not trigger a Planning Permit and are not being assessed.

Proposed Hours of Operation:  
 Monday – Saturday 10.00 am-9.00pm  
 Sunday and Public Holidays 11.00 am – 7.00 pm

**Why is a Permit Required?**

Commercial 1 Zone

A Planning Permit is not required under the Commercial 1 Zone for the Use of the land for a Bottle Shop as it is a Section 1 Use in accordance with Clause 34.01-1.

The application does not include any works that would trigger a Planning Permit under the Zone.

Overlays

The site is not subject to any Overlays.

Particular provisions

Clause 52.27 – A Planning Permit is required to sell packaged liquor to consume elsewhere when there has been no licence issued for the site prior to 8 April 2011.

Particular provisions that are relevant but do not trigger a permit

Clause 52.29 – Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay

The land abuts Commercial Street which is a Road Zone Category 1 (RDZ1). The proposal does not include any variation to the access onto the road. Therefore, a Planning Permit is not triggered. The Department of Transport were notified as part of the application process to ensure the access was adequate.

**Description of the site and locality (including any inspection notes):**Site

The land is located in the main commercial centre of Korumburra. The site is a rectangular shape on 1 title with an area of 1135.00 m<sup>2</sup>. The site is developed with a Service Station that has been disused for a number of years. The site has a canopy area where the bowsers were previously located. There is an area of the site to the north east that can be used for car parking which has not been formally lined marked.

There are two points of access from the RDZ1 to the south west which allows traffic to enter the northern entrance and exit from the second.



*Subject site, source South Gippsland Council Intramaps*

Locality

The land is within the main street of Korumburra, which is the main road through the town, forming part of the South Gippsland Highway. The land abuts established commercial premises to the immediate north and south of the property.

To the west is Commercial Street which is 2 lanes in each direction with a traffic island separating the lanes, further west area established commercial buildings.

To the east is a railway line and associated buildings. This area is intended to be used and developed as part of the “Great Southern Rail Trail” for public use. Further to the east is the established residential area.



Zoning and Aerial photo of the area, source South Gippsland Council Intramaps

**Is there a registered restrictive covenant or a Section 173 Agreement on the title? If so, does the proposal comply with the restriction or Section 173 Agreement?**

Title Details

Volume 10183 Folio 481, Description Crown Allotment 1F Section 2 Township of Korumburra Parish of Korumburra Produced 14/9/2020

Agreement – Section 173 T29112U

The agreement relates to drainage requirements. The agreement does not impact on the subject application.

**Is the land within a Special Water Supply Catchment Area listed in Schedule 5 of the *Catchment and Land Protection Act 1994*?**

No.

**Is an Aboriginal Cultural Heritage Management Plan required?**

No, a CHMP is not required because the proposed use is not in an area of cultural heritage sensitivity.

**Was Further Information Requested under Section 54?**

No formal request for further information was required.

**Was notice of the application given under Section 52(1), 52(1AA), 52(3) or 57B?**

The application was notified to adjoining/adjacent owners and occupiers. The application was also notified by placing a sign on the land.

**Were there any objections received?**

There were 6 objections/submissions received. The issues raised are summarised below:

Objection No	Issues	Response
1	There is no need for another Bottle Shop. Instead a new take away drive through and supermarket is required.	The objector has stipulated that a drive through is required in town but no clarification of why this site is not appropriate. The business model that the applicant is proposing is a drive through service.
2	There are enough of these amenities in the town.	The number of Licences and their locations is addressed as part of the assessment of Clause

		52.27 assessment below.
3	There is no need for another liquor store in the main street as there are too many for the 4500 residents.	As above
4	Proximity to the school bus stop in front of the site. Temptation will be highly visible to teenagers. Additionally, the VLine Public Transport stop is located on the other side of the road.	Liquor Licencing Laws require 'proof-of-age' identification to be shown by to customers who <i>may</i> be under 18 years of age. The establishment is set up to predominately serve those in their own vehicle. There are no restrictions on walk in customers—that may arise from those that utilise the VLine Bus Stop. It is note that consumption of liquor in a public place, in this case being the road side and on public transport, is unlawful?
5	Increase in the accessibility of alcohol within the town and the increase of alcoholism in the area.	The objection further went into details about an increasing problem of unsupervised children in the area that may or may not be alcohol related. This submission is best addressed through the assessment under Clause 52.27.
6	Incompatible use in the Commercial 1 Zone. Within 500 metres of the Korumburra Primary School. Inappropriate due to the visual proximity to school age children.  (1) the proposed site represents an inappropriate location for a liquor store; and  (2) the proposed site will tip the scales in terms of negative cumulative impacts from a cluster of packaged liquor outlets in a small regional town. This is exactly why Clause 52.27 exists in the South Gippsland Planning Scheme - to protect and safeguard sensitive locations and avoid the cumulative impacts of a cluster of packaged liquor outlets.	The objection further highlights how Council is to assess the application requirements more particular the Planning Practice Note 61 Licenses premises: Assessing cumulative impact. An assessment of Clause 52.27 and the Practice Note are addressed further into this report.

**Was the application referred under Section 55 or 57C?**

Authority	Which Clause?	Date received and response
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	<b>Determining or Recommending?</b>	
Department of Transport	66.03 and 52.29 An application to create or alter access to, or to subdivide land adjacent to, a road declared as a freeway or an arterial road under the <i>Road Management Act 2004</i> - Determining	12/10/2020 The Department have provided comment in relation to the signage proposed on the site. In particular the existing sign that is within the Road Reserve to be relocated to be within the site. Three conditions to be included on any permit issued for the site.

**Were there any non-statutory or internal referrals?**

<b>Authority</b>	<b>Date received and response</b>
SGSC Environmental Health	(no response to date)
SGSC Social Planner	28 September 2020 – Comments relating to impact of packaged liquor outlets on the community

**Planning Scheme Requirements and policies:**

SPPF

The following SPPF clauses are considered relevant to the assessment of this application:

- Clause 11.03-1S Activity centres
- Clause 13.07-1S Land use compatibility
- Clause 15.01-4S Healthy neighbourhoods
- Clause 17.01-1S Diversified economy
- Clause 17.01-1R Diversified economy - Gippsland
- Clause 17.02-1S Business
- Clause 17.02-1R Commercial centres - Gippsland

LPPF

The following LPPF clauses are considered relevant to the assessment of this application:

- Clause 21.08 Economic Development
- Clause 21.13 Large District Centre - Korumburra

Clause 22 policies

There are no Clause 22 policies considered relevant to the assessment of this application.

**General Assessment:**

Planning Policy Framework

The application specifically satisfies the objective for Activity Centres by ensuring that the land is appropriately within a zone that allows the business to occur. The land is located within the main commercial centre of Korumburra. The surrounding land along the street is also within the defined commercial area. The land use is compatible with the established uses in the area. The Clause encourages

economic activity within established commercial centres. Furthermore, the application supports the strategies of Clause of 21.08 which encourages the diversification of business and promotion of new services to attract population and economic growth.

The proposal is consistent with the relevant objectives and strategies of the PPF clauses listed above.

#### Local Planning Policy Framework and Local policies

The application supports the objectives for Korumburra at Clause 21.13-2 as the proposed use is offering additional retail opportunity within the town - on a site that has had limited opportunities due to potential contamination from the previous use of the land as a service station. The proposal allows for the reuse of land that has been an underutilised and unattractive site for many years. The policy further seeks the support and encouragement of Korumburra in its role as a retail centre.

Overall the proposal is consistent with the relevant objectives and strategies of the LPPF clauses listed above.

#### Commercial 1 Zone

As stipulated previously within the report a Planning Permit is not required for the proposed use of the land as a Shop and more appropriately a Bottle Shop as defined in Clause 73.03 being:

“Land used to sell packaged liquor for consumption off the premises.”

#### Clause 52.27 – Licensed Premises

##### Decision Guidelines

- *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.*  
The proposal is located within the established Commercial area of Korumburra the use of the land for retail premise is consistent with the surrounding uses. Importantly, the proposal will not allow for the consumption of liquor on the premises, limiting the potential amenity impacts associated with intoxication and associated behaviour. It is noted that sale of liquor is governed by the *Liquor Control Reform Act 1998*, and heavy penalties exist for failure to comply. This includes the sale of liquor to intoxicated persons.  
The objections received contend that there is no need or desire for an additional packaged liquor outlet within the area. However, lack of need is not relevant to the assessment of the application. Potential increases in crime or public nuisance due to the sale and consumption of liquor may be given weight in assessing a planning application, particularly where premises are located in a socially disadvantaged area.
- *The impact of the hours of operation on the amenity of the surrounding area.*  
The proposed hours of operation do not exceed 11.00 pm which is consistent with the existing trading hours of the licensed premises in the area.
- *The impact of the number of patrons on the amenity of the surrounding area.*  
Not applicable.
- *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*  
Cumulative impact refers to both positive and negative impacts that can result from clustering a particular land use or type of land use. Potential cumulative impact from a cluster of licensed premises will vary between locations, depending on the mix and number of venues and whether

the area is a destination for activities associated with the supply of alcohol. Cumulative impact is a product of the number and type of venues present, the way they are managed, and the capacity of the local area to accommodate those venues.

The cumulative impact of licensed premises is referenced in the *Victoria Planning Provisions* at the decision guidelines of Clause 52.27 Licensed Premises.

Although this decision guideline needs to be considered for any application required under Clause 52.27, the extent of the assessment should be proportional to the likely impact of the proposal. The use of Practice Note 61 (Licenses premises: Assessing cumulative impact) should be utilised in assessing cumulative impact. However, Practice Note 61 should be used for applications that:

1. will be licensed and open after 11.00 pm; and
2. is in an area where there is a cluster of licensed premises.

It should be noted that the subject application does not propose to trade beyond 11pm. A cluster would occur where there are:

- three or more licensed premises (including the proposed premises) within a radius of 100 metres from the subject land; or
- 15 or more licensed premises (including the proposed premises) within a radius of 500 metres from the subject land.

Within 500 metres of the site there are:

- one other packaged liquor licence
- two hotels with general licences that enable the sale of liquor for consumption off the licenced premises situated 100 metres and 350 metres from the proposed site.
- three restaurant and café licences and one on-premise licence. Additionally, there are four BYO permits in the town.

The remaining licences in the area consist of limited renewable and restricted club licences.

Its notated that the Korumburra IGA also sells packaged liquor which is outside the 500m catchment.

**Declaration of Conflict of Interest:**

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

**Conclusion and Recommendation:**

Council has considered the matters under Section 60 of the *Planning & Environment Act 1987*. It considers that the proposed use is appropriate having regard to the relevant matters and can be managed through appropriate conditions.

It is recommended that the application be determined at a Council meeting as there are 5 or more objections. It is recommended that the permit application be supported and that Council issue a Notice of Decision to Grant a Planning Permit for the Use of land to sell packaged liquor, in accordance with the submitted plans.

Signed.



Robyn Begg  
Senior Statutory Planning Officer  
Date: 11 November 2020



Peter Bergman  
Statutory Planning Coordinator  
Date: 12 November 2020