

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS AVELEY

PREMISES ADDRESS: CNR MILLHOUSE ROAD AND EGERTON DRIVE
AVELEY

APPLICATION ID: A000194758

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 29 APRIL 2016

Introduction

- 1 On 5 February 2016 an application was lodged by Woolworths Limited (the applicant) for the conditional grant of a liquor store licence for premises to be known as BWS – Beer Wine Spirits Aveley and located at the corner of Millhouse Road and Egerton Drive, Aveley. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of liquor Licensing. There were no objections or interventions to the grant of the application.
- 3 Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers. The submissions and evidence of the applicant are briefly summarised as follows.

The applicant's evidence and submissions

- 4 The proposed liquor store will be adjacent to a Woolworths supermarket at a new shopping centre development (the Centre) at the corner of Millhouse Road and Egerton Drive, Aveley. The proposed liquor store will comprise an area of approximately 229m² and is designed to meet the requirements of consumers who want the convenience of being able to purchase their packaged liquor at the same time as doing their other shopping at the Centre. According to the applicant, the proposed premises will cater to a localised catchment in the suburb of Aveley. It will also cater to residents of Belhus and The Vines, as the Centre is the closest shopping centre for these residents.
- 5 The applicant submitted that The Centre is a planned centre, specifically designed to meet the daily and weekly shopping needs of the existing and new residents of the growing local community. It will be the principal retail shopping hub for the local area and will provide for the household shopping and community needs for the local community.

- 6 According to the applicant, the proposed liquor store will offer the standard BWS product range, services and facilities, which will include:
- a large, diverse and quality product range of approximately 1,600 products;
 - competitive product prices;
 - modern, well laid out premises with wide aisles to accommodate shopping trolleys;
 - a walk-in coolroom; and
 - large refrigerated cabinets offering a wide range of chilled products.
- 7 The applicant submitted a Public Interest Assessment (PIA) together with:
- an Environmental and Health Assessment Report prepared by Caporn Services;
 - Hames Sharley Town Planning Report;
 - A Market Survey Report by West Coast Filed Services;
 - A Transport Assessment Report by Uloth & Associates; and
 - An analysis of health and crime data for the locality.
- 8 It was submitted by the applicant that the locality surrounding the proposed liquor store will experience significant population growth and the provision of a retail packaged liquor outlet at the Centre is one of the services and facilities that would be reasonably expected by the local community.

Determination

- 9 Section 38(2) of the Act places a burden on an applicant for the grant of a liquor store licence to satisfy the licensing authority that the grant of the application is in the public interest. An applicant must therefore adduce sufficient evidence to discharge this burden.
- 10 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 11 The factual matters which I am bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).
- 12 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
 - to minimise harm caused to people, or any group of people, due to the use of liquor; and

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- to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 13 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
 - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 14 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 15 The proposed liquor store is to be located in a new shopping centre development in the suburb of Aveley. The locality can be characterised as a newly developing urban area in the north eastern corridor of the Perth Metropolitan Area. The proposed liquor store is modest in size and is designed as a convenience outlet for consumers using the Centre.
- 16 I have considered the applicant's evidence, including the expert reports, and I find that the proposed liquor store will cater to the packaged liquor requirements of the existing, and future population, of the area. Therefore, the grant of the application would be consistent with object 5(1)(c) of the Act and would also facilitate the use and development of licensed facilities reflecting the diversity of consumer requirements (object 5(2)(a) of the Act).
- 17 I must also be cognisant of the harm minimisation object of the Act when considering whether the grant of the application is in the public interest. In this regard, there is nothing in the evidence to suggest the population of the locality experiences alcohol-related harm at levels greater than the WA baseline level or other parts of Perth. Furthermore, the locality is not disadvantaged and crime and health data for the area does not reflect a community that could be regarded as being unacceptably "at-risk" from alcohol-related harm.
- 18 In weighing and balancing the evidence presented by the applicant, I am satisfied the applicant has discharged its onus under s 38(2) and the grant of the application is in the public interest.
- 19 Consequently, I am satisfied the applicant has complied with all of the statutory requirements and conditions precedent to the application being granted, and a liquor store licence is conditionally granted to the applicant subject to the following:

- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
- (b) compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premises;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 5 February 2016.
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to applicant wishing to trade under the licence;
- (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- (f) the applicant seeking confirmation of the grant on or before **28 April 2017** pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licence

Trading hours

The permitted trading hours are those prescribed in s 98D of the Act. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.

Trading

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

CCTV

The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.

Approval under s 104

The Turnover Rent Arrangement, between the licensee and Fabcot Pty Ltd, as detailed in the submissions dated 5 February 2016, is approved.

Tasting condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

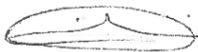
- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.

- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the Food Act 2008 at all times.
- (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
 - (ii) Beer – 100 mls
 - (iii) Spirits – 15 mls.
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

Compliance With Harm Minimisation Policy

The licensee has lodged a copy of the House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

- 20 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 21 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 22 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING