

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

<b>APPLICANT:</b>	<b>DIANE LEE BLUM &amp; MURRAY BLUM</b>
<b>PREMISES:</b>	<b>WILLOW GROVE STORE</b>
<b>PREMISES ADDRESS:</b>	<b>1 LINDSAY DRIVE, YALYALUP</b>
<b>APPLICATION ID:</b>	<b>A000211645</b>
<b>NATURE OF APPLICATION:</b>	<b>CONDITIONAL GRANT OF A LIQUOR STORE LICENCE</b>
<b>DATE OF DETERMINATION:</b>	<b>22 MARCH 2017</b>

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### **Introduction**

- 1 This is an application by Murray Blum and Diane Blum (the applicants) for the conditional grant of a liquor store licence for premises to be known as Willow Grove Store and located at 1 Lindsay Drive, Yalyalup. 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 was one objection to the grant of the application, which was lodged by Gregory and Stephanie Harvey.
- 3 The application will be determined on the written material lodged by the parties, as permitted under ss 13 and 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

### **The applicants' evidence and submissions**

- 4 The applicants currently operate the Willow Grove Store, which is a community focused general store and cafe providing the local area with a convenient range of basic grocery items, snack foods, meals for consumption on and off the premises and everyday general needs.
- 5 The proposed liquor store will be established within a separate part of the general store building, with its own entrance, and comprise an area of approximately 49m<sup>2</sup>. There will be about 215 different liquor products available, with the business to include the following ancillary features and services:
  - promotion of locally produced liquor items;
  - tastings, including from time to time by representatives from the producer;
  - wine club;
  - customer loyalty programme;
  - tourist information on products and the local area;
  - special ordering service to enable customers to order particular products; and
  - ice.

- 6 The applicant provided a Public Interest Assessment (PIA) to support its application. The PIA provided information on the locality surrounding the proposed premises, the proposed manner of trade and addressed the matters set out in s 5 and s 38(4) of the Act. The applicants also submitted a public survey to support their application.

### **The objectors' evidence and submissions**

- 7 According to the objectors, the grant of the application will cause undue offence, disturbance or inconvenience to persons who reside in the area. In this regard, it was submitted that light emanating from the premises, particularly if the applicant trades to 10 p.m., will negatively impact on the amenity of the locality.

### **Determination**

- 8 The statutory and legal framework relating to the grant of a liquor store licence is well established and it is unnecessary to repeat them in any great detail here. Suffice to say, an applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest: s 38(2).
- 9 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).
- 10 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
  - 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.
- 11 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.
- 12 In respect of the objection, the burden of establishing the validity of any objection lies on the objector: s 73(10). Other than the general statement that lights at the premises

late at night may negatively impact on the surrounding area, the objectors have provided no meaningful detail or evidence to support their contention. In the absence of any evidence to support their objection, I find that the objectors have failed to establish the validity of their objection as required under s 73(10) of the Act.

- 13 The applicants' evidence is that Yalyalup, which is located in the City of Busselton, is one of Australia's fastest growing towns and comprises three estates: Willow Grove, Provence and Via Vasse. Willow Grove was the initial and primary development, which has since been complemented by the expansion of the area with the addition of the other two developments. The data indicates that the area surrounding the proposed liquor store enjoys a positive state of socio-economic circumstances.
- 14 The closest packaged liquor outlet to the Willow Grove Store is over 3.5km by car. According to the applicants, residents are forced to travel outside of their area and traverse busy roads and intersections to access a packaged liquor service. It was submitted that outlet density and the distribution of packaged liquor facilities has not kept pace with the expanding and growing nature of the community within the locality.
- 15 I have considered the applicants' evidence and submissions lodged in support of the application and I find that the proposed liquor store will cater to the packaged liquor requirements of the existing and future population of the surrounding locality in accordance with object 5(1)(c) of the Act.
- 16 In terms of the harm minimisation object of the Act, there is nothing in the evidence before me to indicate that the grant of the application would cause undue harm or ill-health to people, or any group of people, in the locality. Neither is there any evidence that the grant of the application will negatively impact on the amenity of the area.
- 17 Therefore, 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.
- 18 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 23 August 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 **21 March 2018** 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.

#### Trading

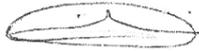
The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

#### 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.
- 19 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 20 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.

- 21 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 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