

## DECISION OF DIRECTOR OF LIQUOR LICENSING

**APPLICANT:** WOOLWORTHS GROUP LIMITED

**OTHER PARTIES:** JENNIFER SAMPSON (OBJECTOR)  
AMRITPAL SINGH DHANJAL (OBJECTOR)  
CARA BAKKER (OBJECTOR)  
RODNEY AND DOROTHEE WILLOWS (OBJECTOR)  
JENNIFER FEWSTER (OBJECTOR)

**PREMISES:** BWS - BEER WINE SPIRITS APPECROSS

**PREMISES ADDRESS:** CNR CANNING HIGHWAY AND REYNOLDS ROAD, MOUNT PLEASANT

**APPLICATION ID:** A900689921

**MATTER:** APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

**DECISION OF:** PETER MINCHIN  
DIRECTOR LIQUOR CONTROL AND ARBITRATION

**DATE OF DETERMINATION:** 28 MARCH 2019

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### Introduction

- 1 On 10 January 2019, a notice pursuant to s 18AA of the *Liquor Control Act 1988* (the Act) was sent to the parties advising them that after consideration of the evidence and submissions presented, I was satisfied that the applicant had discharged its onus under s 38(2) of the Act and the grant of the application was in the public interest. The application was therefore approved.
- 2 Pursuant to s 18AA(3), the applicant has requested written reasons for the decision. These are those reasons.

### Background

- 3 Woolworths Group Ltd (the applicant) lodged an application for the conditional grant of a liquor store licence for premises to be located at the corner of Canning Highway and Reynolds Road, Mount Pleasant and to be known as BWS Applecross. The application was made pursuant to ss 47 and 62 of the Act.
- 4 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. There were no interventions in respect of the application, however objections to the to grant of the application were lodged by:
  - Jennifer Sampson;
  - Amritpal Singh Dhanjal (Cellarbrations Ardross);
  - Cara Bakker;
  - Rodney and Dorothee Willows; and

- Jennifer Fewster.

5 The application was determined on the written submissions of the parties in accordance with ss 13 and 16 of the Act. In addition, this decision has been prepared and should be read in the context of a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.<sup>1</sup>

### **Brief overview of the applicant's proposal**

6 The applicant sought approval to establish a liquor store within a new neighbourhood shopping centre at the corner of Canning Highway and Reynolds Road in Mount Pleasant. According to the applicant, the proposed liquor store, to be located adjacent to a new Woolworths supermarket, will primarily service consumers from the suburbs of Applecross and Mount Pleasant, however, it is also likely to attract customers from other surrounding suburbs, including Como, Salter Point and Ardross.

7 The liquor store will be about 177m<sup>2</sup> in size and would be typical of the BWS format, providing customers using the shopping centre with convenient access to liquor.

8 The applicant lodged a detailed Public Interest Assessment (PIA) to support its application, which included:

- a Town Planning report prepared by MGM Town Planners (MGM report); and
- the results of a community survey undertaken by Painted Dog Research.

### **Brief overview of the objections**

#### *Jennifer Sampson*

9 According to Ms Sampson, the grant of the application is likely to result in an increase in traffic congestion and anti-social behaviour in the surrounding residential neighbourhood. It was submitted that the intersection of Canning Highway and Reynolds Road already experiences significant traffic congestion which will only be exacerbated by the establishment of a liquor store at the proposed location.

10 Ms Sampson also stated that the JDAP panel members who approved the change of use to allow the liquor store planning approval were not elected by, and therefore do not represent, the local community. Ms Sampson was also of the view that the surrounding community is already well serviced for packaged liquor outlets.

#### *Amritpal Singh Dhanjal*

11 Mr Dhanjal, who operates the Cellarbrations at Ardross liquor store, believes that the locality has enough packaged liquor outlets to service the public and the BWS pricing strategy would do the wider community a considerable amount of damage through the sale of alcohol at extremely low prices.

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<sup>1</sup> Refer s 16(7) of the Act.

- 12 It was further submitted by Mr Dhanjal that the accessibility of the proposed liquor store from public transport routes will attract large crowds of problematic drinkers from across the wider area and these persons will negatively impact on the amenity of the local community.

*Cara Bakker*

- 13 Ms Bakker submitted that the area surrounding the proposed liquor store is a quiet residential area and the grant of the application may increase traffic congestion and noise up to 10 p.m. at night. Ms Bakker was also concerned that the grant of the application may increase anti-social behaviour in the area. Ms Bakker referred to advertising and promotions by BWS and was of the view that introducing cheap alcohol into the community will only encourage people to buy more alcohol, resulting in greater harm.
- 14 According to Ms Bakker, the proposed premises was originally going to be a café, however the liquor store development was approved by the JDAP without the support of local residents.
- 15 Ms Bakker also submitted that the proliferation of liquor outlets was not in the public interest and the Government was amending the legislation to restrict packaged liquor outlets.

*Rodney and Dorothee Willows*

- 16 Mr and Mrs Willows are the freehold owners of a liquor store located at 19 Queens Road, Mount Pleasant and are of the view that there are already sufficient packaged liquor outlets in the area.

*Jennifer Fewster*

- 17 According to Ms Fewster, residents were not advised that the use of the premises was changing from a café to a liquor store, and given the residential nature of the locality, it is not a suitable location for a large supermarket and liquor store. Ms Fewster opined that there is already traffic congestion and significant delays on Reynolds Road, especially during peak periods, including school drop off times. The development of the shopping centre may also result in customers parking on the street, causing inconvenience and danger to local residents and increased noise from the traffic. Ms Fewster referenced a Traffic Assessment report by Move Consultants.
- 18 Ms Fewster stated that there are already concerns of anti-social behaviour and litter in the area and having alcohol available at the proposed liquor store will only exacerbate these problems.
- 19 Ms Fewster also highlighted a statement from the Government that the Act would be amended to address the issue of the proliferation of bottle shops and alcohol-fuelled problems.

## Determination

20 In determining this application, I was guided by the following legal principles.

21 An applicant for the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest.<sup>2</sup> An applicant must therefore adduce sufficient evidence to discharge this burden.

22 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.<sup>3</sup>

23 Pursuant to s 73(10) of the Act, the burden of establishing the validity of any objections lies on the objector.

24 The factual matters which I am bound to consider 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.<sup>4</sup>

25 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.

26 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.

27 The licensing authority is also entitled (but not bound) to consider the factual matters set out in s 38(4) of the Act as part of the public interest considerations.<sup>5</sup>

28 In the conduct of proceedings under the Act, the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority

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<sup>2</sup> Refer s 38(2) of the Act.

<sup>3</sup> ***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.

<sup>4</sup> ***Woolworths v Director of Liquor Licensing*** [2013] WASCA 227.

<sup>5</sup> ***Woolworths supra***.

should also act without undue formality, is not bound by the rules of evidence and makes its determination on the balance of probabilities.<sup>6</sup>

- 29 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.<sup>7</sup> However, it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.<sup>8</sup>
- 30 The matters raised by the objectors can be distilled into three primary issues:
- increased traffic congestion;
  - potential increase in anti-social behaviour; and
  - the grant of the application will result in a proliferation of packaged liquor outlets in the area.
- 31 The evidence from the objectors was that the area surrounding the proposed shopping centre and liquor store presently experiences some traffic congestion, which I would observe is not uncommon in and around busy streets in the Perth Metropolitan area. The objectors asserted that the grant of the application will result in an unacceptable increase in traffic congestion and noise in their neighbourhood. However, in my view, any potential increase in traffic congestion and noise in the area is more likely to be attributable to the development and use of the shopping centre itself, not the actual liquor store. The proposed liquor store is a convenience style outlet mainly catering to consumers using the shopping centre and would not be a major attraction in its own right.
- 32 There was no evidence to support a conclusion that the grant of the application will increase anti-social behaviour in the area. Many liquor stores operate in residential areas without negatively impacting on the amenity of the locality. Concerns raised by the objectors about an increase in anti-social behaviour were largely speculative and there was no probative evidence to support this claim.
- 33 The objectors also contend that the surrounding locality is presently well serviced regarding access to packaged liquor and referred to the Government's proposal to amend the Act to restrict the proliferation of package liquor outlets in the community. However, these amendments to the Act have not yet come into operation, therefore I am obligated to determine this application on the basis on the legislation as it presently stands. Whilst the level of existing liquor services in the locality may form part of the overall public interest considerations, it is not a matter which, of itself, can be determinative of an application.
- 34 Some objectors also sought to re-ventilate planning matters before the JDAP, however the applicant has the necessary planning approval as required under s 40 of the Act.

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<sup>6</sup> Refer s 16 of the Act

<sup>7</sup> *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

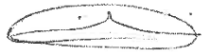
<sup>8</sup> *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

- 35 Consequently, I was of the view that the objectors had failed to establish their grounds of objection as required under s 73(10) of the Act.
- 36 When I considered the applicant's evidence in the context of the objects of the Act, I was satisfied that the grant of the application will cater to the requirements of consumers for liquor and related services in the locality, as contemplated under object 5(1)(c) of the Act. I based this conclusion on the evidence contained the MGM report and the data from the Painted Dog survey.
- 37 Regard must also be had to the other objects of the Act, and in particular object 5(1)(b).
- 38 There was no evidence before me to indicate that the locality surrounding the proposed liquor store experiences rates of alcohol-related harm above that which is commonly accepted in the community or there are any specific at-risk groups who will be attracted to the applicant's store and may be susceptible to harm due to the use of liquor.
- 39 Socio-economic status is a risk factor when considering the vulnerability of the local community to alcohol-related harm. The unchallenged evidence from the applicant was that the surrounding locality is highly advantaged in terms of its socio-economic status. This is clearly evidenced from the SEIFA<sup>9</sup> scores for the suburbs of Applecross, Ardross, Mount Pleasant, Como and Salter Point.
- 40 I was therefore satisfied that the grant of the application would not cause undue harm in the community due to the use of liquor, and the grant of the application would not be inconsistent with object 5(1)(b).
- 41 For these reasons, I was satisfied that the applicant had discharged its onus under s 38(2) of the Act and the grant of the application was in the public interest. The application was therefore approved, subject to the conditions specified in the notice of approval issued on 10 January 2019.
- 42 In addition to the standard conditions for a liquor store, the licence is subject to a condition that the wall separating the proposed liquor store from the supermarket is to be a fixed non-transparent floor to ceiling wall, which is consistent with the plan's lodged in support of the application, as required under r 11 of the *Liquor Control Regulations 1989*. The Liquor Commission, in several decisions has indicated that the separation of the liquor area from the supermarket is a proper consideration of the discretion to be exercised by the licensing authority. Consequently, I am of the view that it is appropriate to ensure the separation of the liquor store from the supermarket, consistent with the information presented in this application, through a condition on the licence.
- 43 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.

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<sup>9</sup> Socio-economic Index for Areas

46 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