

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

**APPLICANT:** WOOLWORTHS LIMITED

**PREMISES:** BWS - BEER WINE SPIRITS BANKSIA GROVE

**PREMISES ADDRESS:** BANKSIA GROVE VILLAGE SHOPPING CENTRE, 81  
GHOST GUM BOULEVARD, BANKSIA GROVE

**APPLICATION ID:** A000222830

**NATURE OF APPLICATION:** CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

**DATE OF DETERMINATION:** 21 JUNE 2017

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### **Introduction**

- 1 This is an application by Woolworths Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be known as BWS – Beer Wine Spirits Banksia Grove and located at 81 Ghost Gum Boulevard, Banksia Grove. 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 to the grant of the application, however the Commissioner of Police (the Commissioner) lodged a notice of intervention pursuant to s 69 of the Act.
- 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 case for the applicant**

- 4 The Banksia Grove Shopping Centre (the Shopping Centre) is the primary shopping centre servicing residents of Banksia Grove and the surrounding suburbs, which includes Tapping, Carramar, Ashby and Mariginiup. The Shopping Centre is being developed in stages with stage 1, completed in 2014, comprising a Coles supermarket, Liquorland and 15 specialty stores. Stage 2 of the Shopping Centre will include a new 3,800m<sup>2</sup> Woolworths supermarket, the proposed liquor store and a further 14 specialty shops. It is anticipated that stage 2 will be completed by April 2018. The two stages will be separate buildings, each with separate access and exit roads. Stages 3 and 4 of the Shopping Centre will be developed at a future date.
- 5 The proposed liquor store will be a typical BWS convenience style outlet of approximately 200m<sup>2</sup>, located adjacent to the Woolworths supermarket. It was submitted that the range of products at the proposed store will be focused on popular brands and includes brands sold exclusively through Woolworths' liquor stores. Approximately 1,450 products will be available at the store.

- 6 The applicant lodged a Public Interest Assessment (PIA) to support its application. The PIA included information on:
- the business to be conducted under the licence;
  - the nature and characteristics of the locality surrounding the proposed liquor store;
  - sensitive premises in the area;
  - existing licensed premises in the area;
  - existing alcohol-related harm in the locality;
  - the likely impact on the amenity of the locality; and
  - the results of a consumer survey undertaken by Thinkfield.
- 7 It was submitted by the applicant that the proposed liquor store will provide a one-stop shopping experience for customers of the supermarket and Shopping Centre. According to the applicant, residents of Banksia Grove and the surrounding suburbs currently have limited choice of liquor stores. The proposed new BWS liquor store will change this and will introduce a new, modern liquor store into a planned and purpose built neighbourhood shopping centre that is designed to provide local services and facilities to the surrounding community.

#### **The intervention by the Commissioner**

- 8 The Commissioner intervened in the application to provide information to assist the licensing authority in making an informed decision in respect of the application.
- 9 In this regard, the Commissioner provided data on the existing level of crime and offending in the locality for the period 2012 to 2016. This data indicates that:
- alcohol-related domestic assaults in Banksia Grove are higher than the State rate, however the rate of offending in the suburbs of Carramar, Tapping and Mariginiup is lower than the State rate;
  - the rate of alcohol-related non-domestic assaults in all suburbs across the locality is lower than the State rate;
  - across the four suburbs in the locality in 2016, alcohol was a factor in 18% of incidents of a domestic nature where police have been required to attend but no criminal offence recorded; and
  - Banksia Grove experiences higher rates of calls to police from members of the public for assistance for domestic related matters, non-domestic assaults and disturbances, however this has remained relatively static across the other suburbs in the locality.
- 10 Consequently, the Commissioner recommended that if the application is granted, conditions should be imposed on the licence to minimise the risk of the premises negatively impacting on the community.

## Determination

- 11 The onus falls upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest: s 38(2).
- 12 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).
- 13 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 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).
- 14 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.
- 15 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.
- 16 The proposed liquor store is to be established adjacent to a Woolworths supermarket as part of the second stage development of the Banksia Grove Shopping Centre. The proposed liquor store will be a typical BWS convenience style outlet. I note the following key aspects of the application, which is taken from the applicant's PIA:
- Banksia Grove is the highest order District Activity Centre (DAC) in the locality designed to service the daily and weekly needs of residents;

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- the closest activity centre being of a higher order than the Banksia Grove DAC is Lakeside Joondalup, which is classified as a Strategic Metropolitan Centre and is located approximately 6.5km south west from the subject site;
  - the suburbs surrounding the proposed liquor store are not disadvantage, with all suburbs having an above average ranking on the Index of Relative Socio-Economic Advantage/Disadvantage;
  - the locality has experienced a high level of population growth in recent years which will continue into the foreseeable future;
  - there is not an over representation of at-risk groups in the locality, except for children and young people which is understandable given the developing nature of the locality;
  - the grant of the application will provide convenience in terms of one-stop shopping for users to the Shopping Centre; and
  - there is good support from the local community for the grant of the application.
- 17 These are all positive factors that weigh favour of the grant of the application. However, I also note that:
- the suburb of Banksia Grove does experience some rates of alcohol-related harm above the State rate; and
  - there is an existing liquor store at the Shopping Centre which is approximately 200 metres from the site of the applicant's premises.
- 18 In assessing the likely degree of harm or ill-health to result from granting the application (object 5(1)(b) of the Act), I am of the view that whilst there is some existing level of alcohol-related harm in the locality, the grant of the application is unlikely to increase that rate of harm above what might be commonly accepted in the community (refer Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors* [2001] WASCA 410). It is also significant that the primary object in s 5(1)(b) is to 'minimise' harm or ill-health, not to prevent harm or ill-health absolutely.
- 19 In respect of the existing liquor store at the Shopping Centre, the applicant submitted that:
- The Banksia Grove shopping complex has been designed in stages with very distinct and defined shopping zones, each with their own vehicular access/exit routes;
  - Zone 1 includes the Coles and Liquorland stores which are currently in operation with other major retailers while Zone 2 will consist of a Woolworths supermarket, the proposed liquor store and other retailers;
  - The walking distance from the Woolworths supermarket to the Liquorland store and back is about 450m, and involves crossing from Zone 2 to Zone 1 across Ghost Gum Boulevard. Ghost Gum Boulevard will be a busy road as it will provide vehicular access from Joondalup Drive to Zone 2 and eventually Zones 3 and 4.

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- As far as the applicant is aware, neither a traffic light system nor a zebra crossing will be provided to assist pedestrians. Moreover, the pedestrian access would not be covered meaning that consumers would be open to any adverse weather conditions making the journey with a trolley even more dangerous.
  - Alternatively, consumers would be required to drive from Zone 2 to Zone 1 via one of two routes. Route 1 is west from the Woolworths supermarket around the back of Zones 1 and 3, being about 800m, or the second route is via Joondalup Drive which is about 1.2km.
- 20 Based on the evidence before me, I accept the applicant's submission that access from Zone 2 to Zone 1 may involve a reasonable degree of inconvenience and would arguably be unsafe.
- 21 Therefore, in consideration of the evidence presented, I find that the proposed liquor store will cater to the packaged liquor requirements of the existing and future population of the locality. The grant of the application would therefore promote objects 5(1)(c) and 5(2)(a) of the Act. I am also satisfied that the grant of the application does not pose an unacceptable risk to the community.
- 22 The applicant, having complied with the statutory requirements and conditions precedent to the application being granted, is conditionally granted a liquor store licence 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 premise;
  - (c) all work being completed within 12 months in accordance with the plans and specifications dated 21 December 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 **20 June 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. 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. Images recorded via the video surveillance system must be retained for 28 days (or such period as the Director of Liquor Licensing specifies), and must be made available for viewing or removal by the Police or other persons authorised by the Director;

### 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:

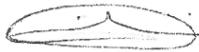
- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises 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.

- 23 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 24 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 25 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