

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

**FIRST APPLICANT:** LIQUORLAND (AUSTRALIA) PTY LTD

**PREMISES:** LIQUORLAND SECRET HARBOUR

**PREMISES ADDRESS:** 420 SECRET HARBOUR BOULEVARD, SECRET HARBOUR

**APPLICATION ID:** A000192472

**SECOND APPLICANT:** WOOLWORTHS LIMITED

**PREMISES:** DAN MURPHY'S

**PREMISES ADDRESS:** 420 SECRET HARBOUR BOULEVARD, SECRET HARBOUR

**APPLICATION ID:** A000195551

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

**DATE OF DETERMINATION:** 07 SEPTEMBER 2016

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### **Introduction**

- 1 On 23 December 2015, an application was lodged by Liquorland (Australia) Pty Ltd (Liquorland) for the conditional grant of a liquor store licence for premises to be known as Liquorland Secret Harbour and located at 420 Secret Harbour Boulevard, Secret Harbour.
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Pursuant to ss 73 and 74 of the *Liquor Control Act 1988* (the Act) an objection to the grant of the application was lodged by Terrance Weston.
- 3 On 16 February 2016, an application was lodged by Woolworths Limited (Woolworths) for the conditional grant of a liquor store licence for premises to be known as Dan Murphy's and located at 420 Secret Harbour Boulevard, Secret Harbour.
- 4 The application was advertised for public comment and objections to the grant of the application were received from:
  - Secret Harbour Tavern Pty Ltd (licensee of the Whistling Kite Tavern);
  - Peter Elrington (Director of Elray Nominees Pty Ltd, licensee of the Golden Bay Liquor Store);
  - Robin Fitzgerald;
  - Joyce Wilcock;
  - Rebecca Hughes;

- M J Frisina;
- Ronald Waltham
- Victor Gastev (Director Gastevich Nominees Pty Ltd as trustee for Secret Harbour Tavern Pty Ltd);
- Terrance Weston;
- Guy Morgan;
- Giselle Darsot; and
- Alisha Jones.

5 On 6 July 2016, Mr Weston advised that he wished to discontinue his objections.

6 Each application was made in accordance with ss 47 and 62 of the Act.

7 Because these two applications relate to premises within close proximity to each other, I determined that they are competing applications which should be heard together. Therefore, pursuant to s 16(12) of the Act, the evidence relating to one of them is evidence relating to the other.

8 The applications and objections will be determined on the written materials 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 Liquorland application**

9 Liquorland seeks to establish a convenience style liquor store adjacent to a Coles supermarket in the Secret Harbour Shopping Centre (the Centre). The proposed liquor store will be approximately 194m<sup>2</sup> and browse only, with no drive through facility. The store will have two entrances, one from the adjacent supermarket and one from the mall area of the Centre.

10 It was submitted by Liquorland that the benefits to the community from the grant of the application include:

- offering customers value for money pricing, with approximately 1,500 lines of stock;
- a revised internal layout incorporating modern store design and consumer convenience and service;
- a 'Food and Wine Matching' program, demonstrating which kind of wine is best matched to the food consumers will be preparing;
- providing consumers with increased choice and competition as a result of having two leading brand outlets in the same location;
- a properly designed, new, modern and professionally managed premises; and
- comprehensive security measures to minimise and deter crime and anti-social behaviour which may have a beneficial impact on security and safety for patrons of the Centre.

- 11 Liquorland lodged a Public Interest Assessment (Liquorland PIA) to support its application. The Liquorland PIA included a report from Data Analysis Australia (DAA) who was engaged by the applicant to conduct consumer surveys; a Planning and Amenity Impact Assessment Report prepared by Bodhi Alliance (the Bodhi report) and a statement from Mr Karl Webber, State Manager Operations, for Coles Liquor in Western Australia.
- 12 DAA conducted two surveys to gauge consumer response to the proposed liquor store: a telephone survey of residents within a 3km of the proposed liquor store; and an intercept survey of shoppers visiting the Centre. The Bodhi report described the existing regional and local land use and social context and identified the potential impacts, both negative and positive, that may result from the grant of the application. Mr Webber was able to attest to the national and regional policies which govern all levels of Coles' liquor operations.
- 13 It was submitted that the proposed liquor store will be one of the first of the remodelled Liquorland stores, and will feature internal fit-out features that will increase consumer benefit above and beyond what is being offered by other liquor stores at the Centre. The store will also be co-located with a Coles supermarket, allowing consumers to conduct 'one-stop-shopping', which 'in contemporary Australian life... is of great importance'.

#### **The Woolworths application**

- 13 Woolworths proposes to establish a Dan Murphy's liquor store at the Centre. The proposed store will be approximately 1,203m<sup>2</sup> in size and carry between 3,500 and 4,000 products valued at about \$1.5 million. In addition, there will be 10,000 products available on-line, which can be collected in-store or delivered to the customers at home. In keeping with Dan Murphy's emphasis on wine, 396m<sup>2</sup> of trading space will be dedicated to wines, 273m<sup>2</sup> for beer and 104m<sup>2</sup> for spirits. A 101m<sup>2</sup> cool room will hold chilled drinks.
- 14 It was submitted that Dan Murphy's has built a brand reputation that its customers trust, based on a combination of the best price, the best range, the best store layout and the best customer service. According to the applicant, the ideal location for a Dan Murphy's store is in the car park of a major shopping centre with a ground level car access from a main road. The proposed location of Dan Murphy's in secret Harbour is consistent with this principle.
- 15 Woolworths lodged a Public Interest Assessment (Woolworths PIA) to support its application. The Woolworths PIA included a report from MGA Town Planners (MGA report), advice from MacroPlan Dimasi on the primary trade area and a report from West Coast Field Services (WCFS report).

- 16 The MGA report provided information on the application from a planning perspective and included information on the demographics of the locality and the WCFS report contained the results of the intercept survey conducted at the Centre.
- 17 It was submitted that the proposed store will provide a comprehensive liquor service that is not currently available in the locality or within close proximity of the locality. The location of the proposed store in the Centre also fits with the one-stop shop requirements of consumers.

### **Common evidence relating to the locality and the Centre**

- 18 Both applicants provided information on the locality surrounding the proposed licensed premises and the redevelopment of the Centre.
- 19 The proposed liquor stores will be located within the Secret Harbour Activity Centre, which is the highest order centre within the locality and is classed as a "District Centre". These centres are designed to serve between 20,000 and 50,000 persons and provide daily and weekly needs of residents with a full array of retailing supported by district level offices, local professional and community services.
- 20 The population of the locality has increased from 7,529 people in 2006 to 16,326 in 2011. The recent rise in population was mainly due to growth in the suburbs of Secret Harbour, Singleton and Golden Bay. By 2017, the population is predicted to be 20,640 people. The largest portion of the population in the locality is contained in the suburb of Secret Harbour. The locality is largely comprised of new, family housing with a high proportion of minors (0 to 14 years of age) and young to middle age adults (30 to 49 years of age). The SEIFA index of Relative Socio-economic Advantage and Disadvantage summarises information about the economic and social conditions of people and households within an area. The locality surrounding the proposed liquor stores enjoys a SEIFA rating of 1085, which means the locality is within the most advantaged 20% of postcodes in the State and 10% of postcodes nationally. Unemployment in the locality is lower than the State average and median individual weekly incomes and median household weekly incomes are higher than the State average.
- 21 The latest available statistics from the Office of Crime Prevention indicate that there was a 21.9% decrease in offences from 2008/9 to 2009/10 for the City of Rockingham, which incorporates the locality. In 2009/10, 36.8% of assaults in the area were classed as alcohol-related, which is lower than the State rate of 45.2%. For the period 2007 to 2011 the rate of alcohol-related hospitalisations for the Rockingham area, which incorporates the locality, was significantly lower than the State rate.
- 22 Within a 3km radius of the Centre, there are three existing packaged liquor outlets:
- BWS Secret Harbour, located within the Centre and about 100 metres from Liquorlands proposed store. This is a browse style outlet with a limited range of

wines, beer and spirits and generally provides a service for customers shopping at the Centre;

- the Whistling Kite Tavern, located adjacent to the Centre on the corner of Oasis Drive and Secret Harbour Boulevard. The tavern incorporates a Cellarbrations branded drive through liquor store which enables shoppers to purchase from their cars or to browse for their packaged liquor needs; and
- the Golden Bay Liquor Store, located on the corner of Dampier Drive and Yuin Street, Golden Bay, which is part of a neighbourhood shopping centre. This store is a moderately sized browse style outlet.

### **The objections**

23 The objections were directed to the Dan Murphy's application. In general, it was submitted by the objectors that the grant of the Woolworths application:

- is not required as the locality is adequately serviced by three existing liquor stores in the area;
- is likely to increase alcohol-related harm in the community because of the downward pressure on the price of alcohol and the presence of at-risk groups in the locality, particularly children and young people; and
- poses a real risk to the community due to the size and scale of the proposed business to be conducted under the licence and the absence of a police station in Secret Harbour.

24 It was submitted that Woolworths already has a presence in the Centre and their proposed liquor store equates to the size of about 5 standard liquor stores and this would effectively result in a proliferation of liquor outlets in the area. Also, the objectors submitted that the grant of the application may result in increased traffic in the area which could negatively impact on the amenity of the locality.

25 According to the objectors, increasing the availability of cheap liquor can lead to increased criminal activity, elevated levels of harm and ill-health suffered by a locality, loss of amenity, increase in anti-social behaviour and other negative impacts, and the Dan Murphy's business model is designed to bring patrons from surrounding areas with the lure of their "Lowest Liquor Price Guarantee". It was submitted that the size and reach of a business of this magnitude is suited to a town or city centre such as Rockingham or other locations of denser population and broader age demographic, not a coastal suburb with an established character that is completely at odds with the application.

### **Statutory and legal framework**

26 An applicant seeking the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest: s 38(2). There is a

positive onus on an applicant to discharge this obligation (refer *Liquorland (Australia) Pty Ltd v Executive Director of Health* [2013] WASC 51; *Seoul Mart City Pty Ltd v Commissioner of Police* (LC27/2014).

- 27 It is therefore incumbent upon an applicant to adduce sufficient information to make it possible for the licensing authority to satisfy itself that the application is in the public interest. An applicant cannot do so by expressing assertions or opinions about the public interest; any assertion or opinion must be supported by appropriate evidence (refer *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* (LC/2015); *Seoul Mart City Pty Ltd v Commissioner of Police* (LC 27/2014); *Busswater Pty Ltd v Director of Liquor Licensing* (LC 17/2010).
- 28 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) WASC 175).
- 29 The burden of establishing the validity of any objection lies on the objector: s 73(10).
- 30 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] WASC 227).
- 31 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.
- 32 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.

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- 33 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.
- 34 Section 16 provides that the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority should also act without undue formality and is not bound by the rules of evidence.
- 35 In considering the public interest, tension may arise between the primary object of minimising harm or ill-health caused to people, or any group of people, due to the use of liquor, and other objects contained in s 5 of the Act. When such conflict arises, the licensing authority must undertake a weighing and balancing exercise. The decision will depend on the particular circumstances of the case (refer *Executive Director of Public Health v Lily Creek International Pty Ltd* [2000] WASCA 258).
- 36 It is 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. The word 'minimise' is consistent with the need to weigh and balance all relevant considerations (refer *Lily Creek* supra). It is a matter for the licensing authority to decide what weight to give to the competing interest interests and other relevant considerations (refer *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356).
- 37 The harm contemplated by the Act is not confined to consumers of alcohol and extends to harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm. This includes harm which may occur through an increase in anti-social or injurious behaviour due to the use of liquor and is not limited to physical harm (refer *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321; *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207).
- 38 Whether harm or ill-health will, in fact, be caused to people, or any group of people, due to the use of liquor is essentially a matter of prediction. However, it is unnecessary to establish on the balance of probabilities that harm or ill-health will be caused to people, or any group of people, before the consideration can be taken into account (refer *Lily Creek* supra). The potential for harm or ill-health is to be taken into account by the licensing authority irrespective of whether the prospect is a possibility or a probability. It is a powerful public interest consideration (refer *Lily Creek* supra).
- 39 The question is whether, having regard to all the circumstances and the legislative intention, the grant of the application is justified. In answering this question, the licensing authority has a wide discretion. It is a matter for it to decide what weight to give to the competing interests and other relevant considerations (refer *Hermal* supra).
- 40 Finally, s 33(1) provides that licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest. Further, s 33(2)(a) provides that an application may be refused, even if the applicant meets all the requirements of the Act. In *Woolworths Ltd*

*v Director of Liquor Licensing* [2012] WASC 384, EM Heenan J described the ‘absolute discretion’ provided for under s 33(1) in the following terms:

*The ‘absolute discretion’ to grant or refuse an application of (sic) any ground or for any reason that the Commission considers in the public interest, s 33(1), is an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole: Hermal Pty Ltd v Director of Liquor Licensing [2001] WASCA356 [6] - [7] (Wallwork J) and Palace Securities v Liquor Licensing(1992) 7 WAR 241, 249 - 250 (Malcolm CJ) and 263 (Wallwork J). Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest or make those objects the exclusive considerations nor the sole determinants of the public interest: Re Michael; Ex parte Epic Energy (WA) Nominees Pty Ltd [2002] WASCA 231; (2002) 25 WAR 511, [52] - [55]; O’Sullivan v Farrer [1989] HCA 61; (1989) 168 CLR 210, 216 and Jericho Nominees Pty Ltd v Dileum Pty Ltd (1992) 6 WAR 380, 400.*

#### **Reasons for determination**

41 I will start by considering the objections. Pursuant to s 73(10) of the Act, an objector must establish the validity of their objection.

42 The main opposition to the Woolworths application came from existing licensees in the area. However, the public interest test under the Act is not directed to protecting existing licensees from competition. The 2007 reforms to the Act abolished the anticompetitive ‘needs test’ and replaced it with a broader public interest test. During the second reading speech of the *Liquor and Gaming Legislation Amendment Bill*, the then Minister for Racing and Gaming stated:

*“...for too long the interests of consumers have taken a back seat to vested industry interests. Through the reforms...this government plans to put the interests of consumers at the forefront... To add a higher emphasis on the needs of consumers’...the competitive impacts on other liquor businesses will not be considered.”*

43 Notwithstanding the above, the objectors expressed concerns about the negative impact of alcohol on the community, referencing general research data linking the availability of alcohol to increased harm, and the possible negative impact that the operation of the Dan Murphy’s store may have on the amenity of the area.

44 The evidence establishes that:

- the locality does not experience elevated rates of alcohol-related crime;

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- alcohol-related hospitalisations for the area are below the State rate;
  - the socio-economic profile for the locality reflects a community which is relatively advantaged;
  - the population in the locality has increased substantially in recent years and will continue to grow over the coming years; and
  - while there may be some increase in the volume of traffic, the proposed Dan Murphy's liquor store will be located in a "District Centre" and form part of the Secret Harbour Shopping Centre, which, when redeveloped, will provide over 600 on-site car parking bays to cater for the retail activities of the area. There will also be an upgrade to the road network in the area as part of the Centre redevelopment.
- 45 Whilst there may be an overrepresentation of young people in the locality, there is no evidence of alcohol-associated problems with this particular demographic in this area. The demographic profile of the locality is consistent with a growing residential community. The harm minimisation object of the Act is not directed to the prevention of harm or ill-health absolutely. The word 'minimise' is consistent with the need to weigh and balance all relevant considerations (refer *Lily Creek* supra). Also, the application of the research data needs to be considered in the context of the "particular local, social, demographic and geographic circumstances of the given case" (refer Bell J in *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VAC 207 and Wheeler J in *Lily Creek* supra).
- 46 In consideration of the above factors, when weighed against the evidence and submissions of the objectors, I am of the view that the objectors have failed to establish the validity of their objection as required under s 73(10).
- 47 The onus fall upon each applicant to satisfy the licensing authority that the grant of their application is in the public interest. Consequently, I must determine whether each applicant has discharged its onus under s 38(2), and then, whether in accordance with the discretion afforded the licensing authority under s 33(1), to grant one, both or none of the competing applications. In exercising this discretion, I must weigh and balance the competing interests of each application and make a determination on the balance of probabilities.
- 48 In respect of the Woolworths application, the proposal is to establish a large format or 'destination' outlet (approximately 1,203m<sup>2</sup>) which will carry between 3,500 and 4,000 lines of product. It was submitted by Woolworths that its proposed liquor store will provide a comprehensive liquor service that is not currently available in the locality or within close proximity of the locality. It was also submitted that the location of the store in the expanded Secret Harbour Shopping Centre fits with the 'one-stop shop' requirement of consumers.

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- 49 The closest large format liquor stores to Woolworths proposed store are First Choice Baldivis, which is 14.1km away by road, and Dan Murphy's Mandurah, which is 17.9km away by road.
- 50 A large majority (81%) of respondents to the Woolworths' survey indicated their support for the grant of the application, with the main reasons for this support being:
- offer better prices/save money;
  - increase the competition in the area;
  - provide a better range and more choice; and
  - be in a convenient location.
- 51 Liquorland seeks to establish a convenience style liquor store (approximately 194m<sup>2</sup>) adjacent to a Coles Supermarket within the Centre. According to Liquorland, the target clientele of the store will be persons who buy liquor as part of their household shopping, or for whom vehicular access by well-established regional and local road routes is convenient.
- 52 Within the Centre, there is already a convenience style outlet (the BWS store), approximately 100 metres from Liquorland's proposed store. Similarly, the Whistling Kite Tavern, which has a Cellarbrations branded drive through liquor store, is located adjacent to the Centre and about 200 metres from Liquorland's proposed store.
- 53 Liquorland's market surveys indicated good support for the grant of the application, with the main reasons respondents indicated they would visit the proposed store being price and convenience, which is not dissimilar to the results of the Woolworths survey.
- 54 In comparing the two applications, I am of the view that the evidence clearly establishes that the Woolworths proposal is far superior to the Liquorland proposal and will provide greater benefits to the public. I arrive at this conclusion for the following reasons:
- the perceived benefits to the community from the grant of the Liquorland application is significantly diminished because it is essentially duplicating existing services at, or adjacent to, the Centre. The BWS store in particular, and to a slightly lesser extent, the Whistling Kite Tavern, already afford users of the Centre the convenience of one-stop shopping and competition; and
  - the Woolworths application will provide the public with a service (large format liquor store) which does not currently exist in the locality; a vastly superior range of product and highly competitive pricing. It can also be used to meet the one-stop shop requirements of shoppers using the Centre.

- 55 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.
- 56 In my view, the evidence submitted by Woolworths establishes that the grant of its application would cater to the requirement for consumers for liquor and related services and the grant of the application would contribute to the proper development of the liquor industry: object 5(1)(c). I am also of the view that the grant of the application would facilitate the use and development of licensed facilities, reflecting the diversity of the requirements of consumers in the State: object 5(2)(a).
- 57 As I have already observed, the supposed benefits to the public from the Liquorland application are diminished because it is duplicating existing services at the Centre. The grant of this application would not be adding to the diversity of liquor products in the area. Liquorland's evidence is that the main reasons why the public would use its proposed store is because of price and convenience, however, this requirement would be catered for by the grant of the Woolworths application.
- 58 The proposed Dan Murphy's liquor store will be able to cater to the requirements of those respondents who supported the Liquorland application; however the reverse does not apply because of the vastly different nature of the two proposed stores.
- 59 While Liquorland's proposed liquor store may provide the public who shop at the Centre with a modest degree of added convenience, convenience does not justify the grant of an application. In LC 18/2015, the Liquor Commission observed at [125] to [129] that:

*“Convenience is just one factor to be considered when considering the requirement of consumers for liquor - under the current Act it must be considered having regard to the proper development of the liquor industry, the other objects of the Act and, of course, the public interest.*

*It is accepted in the community, as evidenced by the many and varied shopping centres and precincts, that there may be some level of inconvenience experienced in purchasing liquor.*

*Liquor is a product that may have negative consequences in the community and is subject to extensive regulation as to its sale, supply and consumption. These controls and restrictions exist for the benefit of the community and whilst some members of the community may express a desire for more convenience, the Commission is entrusted with the responsibility of making a determination on whether the public interest is served by any proposal to widen or extend the level of convenience currently enjoyed by the public by the extension or granting of certain licences.*

*Many shopping centres and precincts, for example, have independent liquor stores quite removed from the local supermarket, and, for that matter, removed from the bakery, post office, bank, butcher or other retail outlets or public utilities regularly frequented as part of a person's or family's weekly or regular shopping expedition. Some liquor stores are even located in relatively isolated areas separate from a shopping centre or precinct.*

*A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission's view, in accordance with the provisions and intent of the Act."*

- 60 Heenan J in *Woolworths Limited v Director of Liquor Licensing* [2012] WASC 384) stated that the statutory policy of regulation captured under object 5(1)(a) of the Act is consistent with a measured approach to the granting of licences. In LC 18/2015, the Liquor Commission, having quoted with authority the words of Heenan J in *Woolworths*, went on to state:

*"A measured approach requires a careful consideration of the broader public interest and simply because a service is as convenient, or more convenient than that currently available, does not, of itself, satisfy the primary and secondary objects or the public interest as specified in the Act.*

*Proper development of the liquor industry is not synonymous with the unrestricted expansion of liquor outlets to satisfy a desire on the part of some consumers of liquor or liquor related services for a relatively insignificant or inconsequential modification or improvement to the level of convenience. The long term interests of (the – sic) liquor industry are best served by a controlled development of the industry having regard to public perceptions of the industry and the overall health and well being of the community."*

- 61 Consequently, based upon the evidence presented, I am of the view that Liquorland has failed to demonstrate that the grant of its application is in the public interest as required under s 38(2).
- 62 Although there is some risk the grant of the Dan Murphy's application may result in Woolworths having a monopoly on the packaged liquor market at the Centre, there are still sufficient alternative packaged liquor outlets in the locality to offer a degree of competition. The Whistling Kite Tavern, which provides both a drive through and browse facility, is reasonably popular with consumers in the area.

- 63 Therefore, in the exercise of my discretion under s 33(1) of the Act, the application by Woolworths is granted and the application by Liquorland is refused.
- 64 The grant of the Woolworths application is 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 18 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 6 September 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.

##### 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.

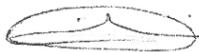
##### Approval under s 104

The application for approval of an arrangement or agreement, lodged on 16 February 2016, between the licensee and Perpetual Limited 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:

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- (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.
- 65 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 66 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 67 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.
- 68 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