

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS SINGLETON

PREMISES ADDRESS: LOT 806 MANDURAH ROAD KARNUP

APPLICATION ID: A000224562

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 10 APRIL 2017

Introduction

- 1 This is an application by Woolworths Limited (the applicant) for the conditional grant of a liquor store licence for premises to be known as BWS-Beer Wine Spirits Singleton and located at Lot 806 Mandurah Road, Karnup. 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 As permitted under ss 13 and 16 of the Act, the application will be determined on the written material lodged by the applicant.

A brief overview of the applicant's evidence and submissions

- 4 The applicant proposes to establish a modern browse style liquor store of approximately 195m² in a new shopping centre (the Centre) development in Karnup.
- 5 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. The Centre will be located in a convenient and central location for residents, with access off Mandurah Road, a key arterial road, and Singleton Beach/Redwood Avenue, the access road to the suburbs of Singleton and Karnup from Mandurah Road.
- 6 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA included the following reports:
 - a Town Planning report by Hames Sharley;
 - a Health and Environment report by Caporn Services;
 - an Assessment of Community Attitudes by Thinkfield; and
 - a Trade Area Analysis by MacroPlanDimasi.

- 7 It was submitted that the development of the Centre has been planned, in accordance with proper planning principles, arising out of the expected growth and development of the area. It forms part of a purpose built, master planned community, and is specifically designed to provide for the current and future shopping needs of the immediate area (which corresponds to the primary trade area). A retail packaged liquor outlet at the Centre is one of the services and facilities that would be reasonably expected at the Centre.
- 8 According to the applicant, significant population growth is anticipated for the primary trade area and the locality. Already the subject of much development, ultimately it is projected that over 22,000 people will live in the primary trade area by 2036, with over 47,000 people in the locality as a whole.
- 9 The applicant submitted that there is only constrained retail packaged liquor services and facilities currently available to residents of the primary trade area and the proposed liquor store will introduce new services and facilities into the area, consistent with development of the area as a whole. The proposed premises will provide consumers with the convenience of purchasing their packaged liquor requirements with other shopping at the Centre.

Determination

- 10 An applicant for the grant of a liquor store licence must satisfy the licensing authority that granting the application is in the public interest: s 38(2). The applicant must therefore adduce sufficient evidence to discharge this burden. In this regard, the applicant submitted a PIA together with a number of expert reports which provided evidence on the surrounding locality, demographics of the area, amenity and character issues, likely health impacts and an assessment of community attitudes.
- 11 In considering the applicant's evidence and submissions, the factual matters which I am bound to take into account are those relevant to the primary and secondary objects of the Act. 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.
- 12 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;

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- 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.
- 13 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).
- 14 I note the following key aspects of this application:
- the Centre is a new development to cater for the daily and weekly shopping needs of the surrounding residents;
 - there is significant development and growth in the area surrounding the proposed liquor store with the population expected to reach 22,000 people by 2036;
 - there is a lack of retail packaged liquor facilities to cater to the growing population;
 - the primary trade area extends around 1.5-2km on either side of Mandurah Road, and around 1-1.5km north and south of the subject site. The defined primary trade area incorporates the suburb of Singleton to the west and the developing suburb of Karnup to the east of Mandurah Road;
 - the proposed liquor store will be a convenience style outlet of moderate size;
 - there is community support for the grant of the application;
 - the grant of the application is unlikely to negatively impact on the amenity of the area; and
 - the locality surrounding the proposed liquor store is not disadvantaged and alcohol-related harm in the area is not above what might normally be accepted within the community.
- 15 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). I do not consider that the grant of the application would be contrary to the proper development of the liquor industry in the State.

- 16 I also note that there is nothing in the evidence to suggest that the grant of the application will cause undue harm or ill-health in the community due to the use of liquor. Consequently, conflict does not arise in considering the application with regard to the various objects of the Act, particularly the harm minimisation object of the Act.
- 17 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 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 premise;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated <<date of plans>>
 - (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 <<12 months from the date of the decision>> 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.

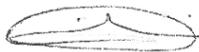
Approval under s 104

Pursuant to s 104 of the Act, the agreement between the licensee and ARP No.3 Pty Ltd, as set out in the application and submissions dated 13 January 2017, 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.
- 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 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