

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS

PREMISES ADDRESS: LOT 5001 TIFFANY CENTRE DALYELLUP WA 6230

APPLICATION ID: A000057289

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

DATE OF DETERMINATION: 5 May 2015

Introduction

- 1 On 22 December 2014 an application was lodged by Woolworths Limited (the applicant) for the conditional grant of a liquor store licence for premises to be known as BWS - Beer Wine Spirits and located at Lot 5001, Tiffany Centre, Dalyellup. The application is made pursuant to s 47 and s 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 Pursuant to s 13 and s 16 of the Act the application will be determined on the papers. The submissions and evidence of the applicant are briefly summarised as follows.

Submissions and evidence of the applicant

- 4 Dalyellup is a rapidly emerging coastal suburb in the City of Capel, located approximately 7kms south of Bunbury and 170kms south of Perth. In 2014 the resident population of Dalyellup was approximately 9,000 and it is anticipated that the population will grow to 12,500 persons by 2021.
- 5 The proposed liquor store will be located in a new shopping centre to be constructed at Lot 5001, Tiffany Centre (the Centre) and adjacent to a Woolworths supermarket. In addition to the Woolworths supermarket, the Centre will contain 22 specialty shops and will be of regional importance because the Centre will ultimately form part of a larger staged Shopping District Precinct to be completed in Dalyellup, which will then have sub-regional significance.
- 6 According to the applicant the proposed liquor store will offer a broad range of products, services and facilities and will meet the one-stop shopping requirements of shoppers at this location.
- 7 The applicant submitted a Public Interest Assessment (PIA) which included a Market Survey Report prepared by West Coast Field Services.

- 8 The PIA provided details of the manner of proposed trade, existing services and facilities in the area, the demographic profile of the local community, crime data and a social risk assessment. The applicant also provided Socio-Economic Index for Areas data prepared by the Australian Bureau of Statistics which indicates that the Dalyellup community is highly advantaged, and therefore, according to the applicant there is a lower propensity for alcohol-related harm at this location.
- 9 The Market Survey Report indicated strong support for the grant of the application from residents of the area with “convenient location” being one of the most common reasons given for that support.
- 10 Consequently, it was submitted by the applicant that the grant of the application is in the public interest because the locality is a rapidly growing, affluent population with an increased need for services in general, and packaged liquor in particular. The grant of the application will cater to the consumers in terms of choice, diversity and convenience both now and into the foreseeable future.

Determination

- 11 There is no presumption in favour of the grant of licence under the Act. 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 (refer s 38(2) of the Act). Consequently, the burden of persuasion rests with applicant, who must adduce sufficient evidence, in the circumstances of any particular case, to discharge this onus.
- 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 the licensing authority is 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.
- 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.

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- 15 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.
- 16 The applicant seeks to establish a BWS branded liquor store in a new shopping centre development in Dalyellup. The applicant's uncontroverted evidence is that Dalyellup is a rapidly growing suburb south of Bunbury and the new shopping centre will form part of a larger Shopping District Precinct that is being developed in stages in Dalyellup. Dalyellup is a relatively affluent suburb and there is no evidence before me to suggest the grant of the application will unduly impact upon the health and well being of the local community. There is strong local support from within the community for the grant of the application.
- 17 In determining this application, I am also mindful of the finding of Buss JA in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 where he stated that it is a notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres.
- 18 In assessing the evidence presented, I am satisfied the grant of the application is in the public interest because it will cater to the contemporary shopping requirements of consumers, meeting their convenience, expectations and needs whilst not negatively impacting on the local community. The grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act.
- 19 Consequently, I am satisfied the applicant has discharged its onus under s 38(2) of the Act and that the applicant has complied with all other statutory requirements and conditions precedent to the application being granted. Therefore 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 23 December 2014;
 - (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 May 2016 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.

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.

- 20 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 21 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 22 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.
- 23 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
6 May 2015