

DECISION OF DIRECTOR OF LIQUOR LICENSING

LICENSEE: WOOLWORTHS LIMITED

PREMISES BWS - BEER WINE SPIRITS HOCKING

EXISTING ADDRESS LOT 179 EAST ROAD, HOCKING

PROPOSED ADDRESS: 1387 WANNEROO ROAD WANNEROO

LICENCE NUMBER: 6030084301

APPLICATION ID: A000128872

NATURE OF APPLICATION: CONDITIONAL REMOVAL OF LICENCE

DATE OF DETERMINATION: 24 JUNE 2015

Introduction

- 1 On 18 December 2014, an application was lodged by Woolworths Limited (the applicant) for the conditional removal of the liquor store licence located at Lot 179 East Road, Hocking and known as BWS – Beer Wine Spirits Hocking to premises to be located at 1387 Wanneroo Road, Wanneroo and to be known as Dan Murphy’s Wanneroo. The application is made pursuant to ss 62 and 81 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, pursuant to s 69 of the Act, the Commissioner of Police (the Commissioner) lodged a notice of intervention.
- 3 In accordance with ss 13 and 16 of the Act, the application will be determined on the papers. The evidence and submissions of the parties are briefly summarised as follows.

Submissions on behalf of the applicant

- 4 According to the applicant, the existing liquor store forms part of a small local centre that consists of four shops, however, only two of the shops, a fish and chip shop and the liquor store, are conducting business. The other two shops have been vacant for about 18 months. The existing store, which is about 152m² in size, trades under the BWS – Beer Wine Spirits banner and provides the standard range of “BWS” liquor, which is focused on mainstream liquor brands. A large proportion of the wines stocked are priced from \$10 to \$25 and limited boutique, specialty products or wines produced by small wineries are offered. The existing liquor store is essentially a convenience store which has a relatively confined market.

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- 5 The proposed liquor store will be located in the Drovers Marketplace on Wanneroo Road. It will have a floor area of 1,446m², of which 1,164m² will be trading floor, and will provide the range of liquor products and services normally associated with a Dan Murphy's liquor store. This includes:
- between 3,500 and 4,000 product lines including local, Australian and international old, rare and premium wines and liquor products;
 - best possible prices;
 - knowledgeable, well-trained staff;
 - state of the art retailing facilities;
 - wine tastings, specialty events and gift cards;
 - in-store product experts;
 - Cellar Release Program; and
 - customer loyalty program.
- 6 The locality surrounding the proposed liquor store takes in the suburbs of Tapping, Carramar, Banksia Grove, Ashby, Sinagra, Mariginiup and Wanneroo. Currently, an estimated 40,000 to 50,000 people live in the locality, which is one of the fastest growing regions in Australia. This population is expected to double by 2036.
- 7 The applicant submitted a Public Interest Assessment (PIA) to support its application, which included an Assessment of Community Attitudes prepared by West Coast Field Services (the market survey), an analysis of health and crime statistics for the area, a trade area analysis prepared by MacroPlan Dimasi, a Health and Environment report prepared by Caporn Services (the Caporn report) and a town planning report prepared by Hames Sharley (WA) Pty Ltd (Hames Sharley report).
- 8 The market survey indicated that 74% of respondents who purchase packaged liquor considered the proposed liquor store a good idea, with convenient location, better prices/save money and increased/more competition given as the main reasons for this support. In addition, 79% of liquor purchasers stated they would be likely to use the proposed liquor store, of which 65% stated they will do so as a specific trip and 47% stating they would go as part of a trip to Drovers Marketplace.
- 9 According to the Hames Sharley report, there are two existing liquor stores in the locality and two other liquor stores have recently had licences conditionally granted. These liquor stores function as convenience stores, whereas the proposed Dan Murphy's store will operate as a destination store offering more extensive and comprehensive services, facilities and product range. The Socio-Economic Index for Areas (SEIFA) indicates that households in the locality are not particularly disadvantaged; with alcohol-related hospitalisations for the period 2007 to 2011 being significantly lower than the State rate. Alcohol-related assaults in the area are also lower than the State rate.

- 10 It was submitted by the applicant that while there is a level of alcohol-related harm and ill-health in the locality, there is nothing to indicate the levels are greater than that experienced in any other area of Perth. Consequently, it was submitted that the positive benefits to the community from the grant of the application outweigh any potential negative impacts.

Submissions on behalf of the Commissioner of Police

- 11 The Commissioner intervened in the application for the purposes of having conditions imposed on the licence, if the application is approved.
- 12 In this regard, the Commissioner submitted that with a growing population in the locality, there is likely to be an increase in 'at-risk' groups, particularly juveniles, in the area and therefore the availability of packaged liquor may contribute to future problematic anti-social issues and an increase in theft from the proposed liquor store.
- 13 Consequently, the Commissioner suggested conditions relating to trading hours, the provision of CCTV and advertising on the external facade of the premises.

Determination

- 14 This is an application to remove an existing liquor store licence from a small, run down shopping facility in Hocking to a new site in the Drovers Marketplace, Wanneroo. The distance between the two sites is approximately 7.5km. The proposed liquor store will be substantially larger than the existing store and operate under the Dan Murphy's banner, providing an extensive range of liquor products and services normally associated with such a store. There are no objections to the grant of the application.
- 15 The applicant must, pursuant to the requirements of s 38(2) of the Act, satisfy the licensing authority that the grant of the application is in the public interest.
- 16 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).
- 17 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.

18 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.

19 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.

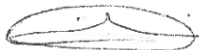
20 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.

21 To discharge its onus under the Act, an applicant must adduce sufficient evidence which is both relative and probative. In this regard, the applicant provided a detailed PIA accompanied by various expert reports. Based upon the applicant's evidence I find:

- there is public support for the grant of the application and the services and facilities to be provided, as evidenced in the market survey;
- the locality has a growing population;
- the proposed liquor store will provide a range of products and services that are not currently available in the locality;
- whilst there are some pockets of disadvantage in the locality, overall the locality has a median SEIFA index; and
- crime and alcohol-related harm in the locality is below the state rate.

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- 22 In respect of considering the evidence in terms of the objects of the Act, it should be noted that catering to the requirements of consumers for liquor and related services under object 5(1)(c) of the Act needs to be considered in the context of the proper development of the liquor industry. In this regard, I note from the applicant's evidence that the next nearest large packaged liquor outlet or destination outlet from the applicant's proposed liquor store is Dan Murphy's Currumbine, some 6.3 km away by road. Significantly, however, according to the MacroPlan Dimasi report there are important geographic elements separating the respective trade areas of these two stores.
- 23 Consequently, I am of the view that the grant of the application would be catering to the requirements of consumers for liquor and related services and would facilitate the use and development of licensed premises reflecting the diversity of consumers, consistent with objects 5(1)(c) and 5(2)(a) of the Act. In consideration of the harm minimisation object of the Act (object 5(1)(b)), there is nothing in the evidence presented to suggest that the grant of the application would present an unacceptable risk to the community.
- 24 I am therefore satisfied that the grant of the application is in the public interest, as required under section 38(2) of the Act.
- 25 The Commissioner intervened in the application to recommend various conditions that might be imposed on the licence, if granted. The applicant has submitted that there is no evidence to support the conditions proposed by the Commissioner and the applicant already has in place various management practices to address many of the Commissioner's concerns. Consequently, it was submitted by the applicant that it is unnecessary to impose the requested conditions. Having considered the submissions of the parties, I accept the applicant's submissions, except for the condition relating to the CCTV system. Given that the applicant will have such a system in place, it is appropriate, in my view, that the CCTV system complies with the relevant policies of the Director of Liquor Licensing and a condition reflecting this will be imposed on the licence.
- 26 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, 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 19 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 23 June 2016 pursuant to s 62(4)(c) of the Act.
- 26 Trading may not commence at the premises without the prior approval of the Director of liquor Licensing.
- 27 Pursuant to s 104 of the Act, the application for approval of the Turnover Rent Agreement as stipulated in the application dated 19 December 2014 is approved.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING