

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS SEACREST

PREMISES ADDRESS: LOT 781 BARRETT DRIVE, WANDINA

APPLICATION ID: A000209149

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 22 MARCH 2017

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 Seacrest and located at Lot 781, Barrett Drive, Wandina. 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. An objection to the grant of the application was lodged by Aydon Pty Ltd, Danroy Pty Ltd, PDJ Geraldton Pty Ltd and Peter Jeffree (all entities associated with Con's Liquor Geraldton, which will be referred to as the Con's Liquor objection) while the Commissioner of Police (the Commissioner) lodged a notice of intervention under s 69 of the Act.
- 3 The application will be determined on the written material submitted 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.

Summary of the application

- 4 The applicant seeks to establish a 200m² convenience style liquor store in a neighbourhood centre to be known as the Seacrest Shopping Centre (the Centre). The Centre will be constructed in the new Seacrest Estate in the suburb of Wandina, south of the Geraldton CBD. The development of Seacrest Estate commenced in 2000 and is to comprise of residential properties, schools, a retirement village and recreation and commercial facilities. It is estimated that the Seacrest Estate will provide accommodation for approximately 3,360 persons on completion.
- 5 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided information and data relating to the locality surrounding the proposed liquor store and addressed the matters set out in s 5 and s 38 of the Act. The PIA contained:

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- a report from MGA Town Planners which provided planning and demographic data for the locality;
 - a report from Pitney Bowes in respect of defining the trade area of the proposed liquor store;
 - research and analysis of data on alcohol-related harm and health, alcohol purchasing habits and issues on the locality;
 - the results of telephone interviews of residents in the trade area conducted by Thinkfield; and
 - a review of other packaged liquor outlets in the locality.
- 6 In respect of the demographic profile of the locality surrounding the proposed liquor store (based upon the 2011 Census), the applicant's evidence is that:
- the population in the locality has risen by approximately 567 persons per year. The population was 11,526 at the 2011 Census and is expected to rise to 14,361 by mid 2016;
 - the development of the suburbs of Wandina and Mount Tarcoola, which surround the proposed liquor store, account for most of the population increase;
 - the proportion of indigenous persons in the locality is above the Country WA and State average, however this result is skewed by the high proportion of indigenous people in the suburbs of Karloo (32.55% indigenous population), Rangeway (26.2%) and Utakarra (24%). These suburbs are located to the far north east of the proposed store and not within walking distance. The proportion of indigenous persons in the suburbs of Wandina (3.9%), Tarcoola beach (3%) and Mount Tarcoola (3.3%) is dramatically lower;
 - unemployment across the locality is 3.4%, which is higher than Country WA (2.8%) but lower than the State (4.7%), however unemployment is lowest in the suburbs of Wandina (2.1%), Mount Tarcoola (1.6%) and Tarcoola beach (2.5%) whilst higher in the suburbs of Karloo (10%), Rangeway (7.1%) and Utakarra (7.8%);
 - the Index of Socio-Economic Advantage/Disadvantage rank indicates that the suburbs of Wandina (9 nationally and 9 State wide), Mount Tarcoola (8 and 7) and Tarcoola Beach (9 and 8) are relatively advantaged suburbs, while Karloo (1 and 1), Rangeway (1 and 1) and Utakarra (1 and 1) are disadvantaged suburbs.
- 7 In respect of the telephone survey of residents conducted by Thinkfield, the applicant submitted that:
- 70% of respondents believe they will use the proposed Seacrest Neighbourhood Centre instead of where they currently shop;

- 62% of liquor purchasers think the proposed liquor store is a good idea; and
 - convenient location is the main reason why liquor purchasers want the proposed store.
- 8 According to the applicant, there are two packaged liquor outlets in the locality: the Geraldton Motor Inn, just over 2km from the proposed store, which has a drive through facility; and the Oceanside Liquor Store, 3.65km away, which has a browse area of about 90m² and located in the Southgate Forum, which is a small neighbourhood centre containing six speciality shops (including the bottleshop).
- 9 In summary, it was submitted by the applicant that the proposed liquor store will provide a convenient 'one-stop' shopping experience for the growing Seacrest Estate and surrounding areas that is not currently available within the locality. The proposed liquor store will form part of a neighbourhood shopping centre which is designed to serve the needs of the local community. Currently, residents of Seacrest Estate need to travel to Geraldton city centre to access Woolworths and BWS and more than 2km to access any other liquor store. There is strong support from residents for the proposed liquor store and the main reason for this support is that it will be in a convenient location and it will provide a convenient way of buying takeaway liquor in conjunction with grocery shopping.

Con's Liquor objection

- 10 Con's Liquor objected on two grounds permitted under s 74(1) of the Act, namely:
- the grant of the application would not be in the public interest; and
 - the grant of the application would otherwise be contrary to the Act.
- 11 In respect of the first ground of objection, it was submitted that there is no evidence to show there exists a consumer requirement for another liquor store to be granted in the City of Greater Geraldton, and more particularly, for a small BWS liquor store at the Seacrest shopping Centre. Con's Liquor submitted that the applicant's survey data indicates that only 27% of the respondents believed the proposed liquor store was a good idea. Further, the survey data shows there is no great propensity to do one-stop shopping for liquor and groceries in the town of Geraldton.
- 12 Con's Liquor also submitted that the applicant has failed to acknowledge two material issues:
- the Abraham Road, which is a major new link road, and links Wandina to most other suburbs North, East and CBD; and
 - Con's Liquor, which is a large format liquor store, had its licence conditionally granted in June 2016,

and the Con's Liquor store will change the retail packaged liquor trade in Geraldton, and the outlet is easily accessible for residents of Wandina/Seacrest via the new Abraham link road.

- 13 In respect of the second ground of objection, it was submitted that the applicant has failed to demonstrate that it will have exclusive possession of the proposed licensed premises, as required under s 37(5) of the Act, nor has the applicant shown that it can comply with s 39 and s 40 of the Act.

The intervention by the Commissioner

- 14 The Commissioner intervened to provide evidence and information to assist in the determination of the application and, if the application is approved, to recommend trading conditions that will assist to minimise the potential harms and anti-social behaviour attributable to licensed premises.
- 15 The Commissioner provided data on the existing alcohol-related crime in the locality. For the period 1 January 2015 to 1 July 2016, there were 2,266 relevant criminal offences in the locality of which 381 (16.8%) were alcohol-related. More importantly, 31% of domestic and non-domestic assaults involve the use of alcohol; however, alcohol was a contributing factor in 53% of domestic assaults. For the 2015 calendar year, there were 2574 calls for police assistance with these calls relating to incidents of assault, disturbance and domestic incidents.
- 16 The Commissioner also noted that the Abraham Street bridge recently opened, making the suburb of Wandina more accessible by foot and by vehicle for at-risk groups in the suburbs of Karloo, Rangeway and Utakarra. The Commissioner submitted that the applicant is not able to accurately predict the impact on the locality based on accessibility or the presence of a closer existing liquor store. Consumers have various modes of transport and if a closer liquor store has a limited range it is likely consumers may travel to the proposed premises with a larger range, therefore impacting the locality to a greater extent.
- 17 The Commissioner provided information of the existing licensed premises in the locality, observing that these premises do not commence trading before 10 a.m. as part of the local accord initiative.
- 18 Consequently, the commissioner recommended the imposition of trading conditions relating to CCTV, use of lockable cabinets, dress standards and limiting the external advertising of products or pricing.

Determination

- 19 The proposed liquor store is to be located in a new shopping centre within the residential development of Seacrest Estate, in the suburb of Wandina, which will provide for approximately 3,360 residents when complete. The locality has increased in population over the last few years and this growth is expected to continue. The

proposed store is a convenience style outlet typical of BWS stores. The immediate suburbs surrounding the liquor store, which will form the main catchment area for the store, are relatively affluent.

20 The objector contends that the grant of the application is not in the public interest because the applicant's evidence:

- does not identify what the consumer requirements are in Geraldton (and in the suburb of Wandina) for packaged liquor or how shoppers prefer to shop for liquor;
- does not reflect the requirements for packaged liquor that is not already provided for by existing outlets;
- does not identify any consumer requirements for the proposed liquor store; and
- does not demonstrate how the proposed liquor store would assist in the proper development of the liquor industry.

21 The objector also contends that the applicant has failed to meet some the other requirements of the Act in respect of health and planning approvals and a right to possession of the premises.

22 Each party bears an onus under the Act. The applicant, pursuant to s 38(2) of the Act, is required to satisfy the licensing authority that the grant of the application is in the public interest. The applicant must therefore adduce sufficient evidence to discharge this burden.

23 The burden of establishing the validity of any objection lies on the objector: s 73(10).

24 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).

25 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] WASCA 227).

26 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

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- 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.
- 27 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.
- 28 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.
- 29 The evidence indicates that there is a significant variance in terms of the demographic profile of locality in which the proposed liquor store is to be located: the suburbs immediately surrounding the proposed liquor store (Wandina, Mount Tarcoola and Tarcoola Beach) are relatively advantaged, while those suburbs located to the north east of the proposed store (Karoo, Rangeway and Utakarra) are relatively disadvantaged. However, it was submitted that the main trade area for the proposed liquor store is likely to be from those suburbs immediately surrounding the Centre, being Wandina, Mount Tarcoola and Tarcoola Beach.
- 30 It was submitted that the proposed liquor store, as part of the new Seacrest Shopping Centre, will cater to the needs of local residents. Existing commercial developments are primarily confined to the Central Geraldton area or along the Brand Highway. According to the applicant, there are no significant shopping centres in the central or southern portion of the locality of the proposed store. The residents of Seacrest Estate and the Wandina area are currently required to travel some 3.4km to the nearest neighbourhood Centre in Mount Tarcoola, which does not have a liquor outlet.
- 31 The applicant submits that the lack of shopping facilities in the locality has led to residents surrounding the proposed liquor store having to travel to the centre of Geraldton to shop for groceries and liquor.
- 32 The applicant submitted evidence of a survey of residents in the locality of the proposed liquor store. This survey indicates that 70% of the local community believe they will use the Seacrest Shopping Centre, with 62% of liquor purchasers thinking the proposed liquor store is a good idea. Convenient location and the ability to purchase packaged liquor with other shopping are the main reasons for this support. In respect of likely usage of the applicant's liquor store, 60% of liquor purchasers indicated they may use the store.

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- 33 Based upon the applicant's evidence, I find that the proposed Seacrest Shopping Centre and BWS liquor store will provide local, convenient shopping for the surrounding residents. In my view, the evidence establishes that the grant of the application will cater to the requirements of consumers for liquor and related services, now and into the foreseeable future, in accordance with object 5(1)(c) of the Act and would facilitate the use and development of licensed facilities reflecting the diversity of the requirements of consumers in the State (object 5(2)(a)). I am also satisfied from the documents lodged by the applicant that it will comply with other technical requirements of the Act.
- 34 I therefore find that the objector has failed to make out its grounds of objection as required under s 73(10) of the Act.
- 35 The Commissioner provided evidence of existing alcohol-related harm in the local community. As I have already observed, there is considerable variance in the demographic profile of the locality, with the suburbs immediately surrounding the proposed liquor store, being quite affluent. These affluent suburbs will be the main catchment area for the Seacrest Shopping Centre and the proposed liquor store. According to the applicant, the proposed liquor store is not easily accessible by persons from the suburbs of Karloo, Rangeway and Utakarra by foot or public transport, and there is an existing liquor store (Utakarra Liquor barn) which is closer to these suburbs. I also note that the objectors' liquor store (conditionally granted by the Liquor Commission in June 2016), which will be a large destination outlet, will also be much closer to those at-risk persons in these suburbs.
- 36 In respect of the harm minimisation object of the Act, while there may be some risk that the grant of the application may increase alcohol-related harm in the community, that risk in my view will be minimal given the location of the proposed liquor store, the likely catchment area for the proposed liquor store, and the existing outlets which are located closer to at-risk persons who can therefore more readily access alcohol from those stores. The potential risks associated with the grant of the application do not outweigh the benefits to the current and future residents of Seacrest Estate and the immediate surrounding suburbs.
- 37 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.
- 38 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) the applicant lodging an executed lease for the premises;

- (c) compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premise;
- (d) all work being completed within 12 months in accordance with the plans and specifications dated 25 July 2016;
- (e) 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;
- (f) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- (g) the applicant seeking confirmation of the grant on or before **21 March 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.

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.

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:

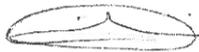
- (i) Wine – 50 mls
- (ii) Beer – 100 mls
- (iii) Spirits – 15 mls.

(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.

- 39 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 40 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 41 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.
- 42 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