

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS SHOREHAVEN

PREMISES ADDRESS: 19 SHOREHAVEN BLVD ALKIMOS

APPLICATION ID: A000057283

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

DATE OF DETERMINATION: 23 JUNE 2015

Introduction

- 1 On 12 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 Shorehaven and located at 19 Shorehaven Boulevard, Alkimos. 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. Objections to the grant of the application, pursuant to ss 73 and 74 of the Act, were lodged by Ann and Roy Mellor and Edward and Lynette Eaton (the objectors). The Commissioner of Police (the Commissioner), pursuant to s 69 of the Act, 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 submissions and evidence of the parties are briefly summarised as follows.

Submissions by the applicant

- 4 It was submitted by the applicant that Alkimos is one of Perth's newest master planned communities and one of the most significant urban developments in Western Australia. It is located at the end of the urban development that extends along the northern coastal corridor in the Perth Metropolitan area. Alkimos will be home to over 50,000 people and will include a regional town centre, a coastal village and community infrastructure. The proposed liquor store will form part of a new shopping facility in Alkimos to be known as the Shorehaven Coastal Village Centre (the Centre). The Centre is the first commercial and retail centre for the locality and has been specifically planned as part of the development of the Alkimos area and forms part of the Shorehaven estate. The Centre will be a single level structure with adjacent car parking.

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- 5 The proposed liquor store will be a modern browse style store comprising an area of 363m², which will include 160m² of trading floor, a walk in cool room, storage and amenities and a two lane drive through facility of 94m². The proposed liquor store will operate under the “BWS – Beer Wine Spirits” brand, which is the applicant’s retail liquor brand that is focused on providing convenient retail packaged liquor services and facilities.
- 6 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA included a report from MGA Town Planners (MGA report), a Health and Environmental Report (Caporn report) and an independent market survey to assess the local community’s views on the application (the market survey). The PIA also included health and crime statistics for the locality.
- 7 The MGA report included information on:
- the nature and character of the locality surrounding the proposed liquor store;
 - the purpose and role of the Centre;
 - the demographic profile of the locality, including a socio-demographic profile; and
 - existing licensed premises in the area.
- 8 According to the MGA report, Marmion Avenue is the main north/south artery serving the locality and the northern half of the North-West corridor. The subject site is well positioned to function as a local convenience centre with a focus on passing trade by virtue of its location along Marmion Avenue and the apparent range of services known and likely at the complex. The drive through service part of the proposed liquor store is also consistent with the convenience orientation of the complex. There are no other packaged liquor outlets within the locality, with the nearest premises being 5.7km away by road.
- 9 The Caporn report concluded that:
- the vicinity in which the proposed liquor store is to be located is best described as a residential area offering the convenience of a small neighbourhood shopping centre. The closest existing homes to the Local Convenience Centre are approximately 300 metres to the North West, separated by Shorehaven Boulevard;
 - if approved, the proposed liquor store will provide residents with a more convenient and competitive shopping environment;
 - there are no other licensed premises or packaged liquor outlets in the locality; and
 - the proposed liquor store will provide some variety to the small shopping precinct that collectively will add to shopper convenience and should increase confidence in the estate to support small local retail outlets.

- 10 In terms of health and crime data for the locality, it was submitted that there are no alcohol-related crime statistics reported specifically for the locality, however reported data for the City of Wanneroo and its North-West corridor indicates a significantly lower level of alcohol-related crime and hospitalisations when compared to the State rates. Consequently, it was submitted by the applicant that there is nothing to suggest the population of the locality suffers from alcohol-related harm or ill-health at levels that are greater than that experienced in other parts of Perth, nor that the manner of trade at the proposed premises will exacerbate the risk of harm to any at-risk person or groups in the area.
- 11 The market survey indicated that more than three quarters (79%) of respondents who purchase liquor stated that they would be likely to use the proposed liquor store, with 56% stating that they would be “extremely likely” to do so. The main reason given by respondents as to why they would use the proposed store was because it was “close to my home/in the neighbourhood”.
- 12 In conclusion, the applicant submitted that the grant of the application was in the public interest because the positive benefits to the community outweigh any potential negative impacts.

Submissions by the objectors

- 13 The objectors raise similar concerns. They are concerned that the grant of the application will lead to increased traffic congestion on Shorehaven Boulevard which is the only road in and out of the Estate. In addition, the grant of the application may lead to more rubbish and litter in the streets, or street drinking. It was submitted that there are enough outlets in the area to cope with demand, with two liquor outlets in Yanchep, about 10 minutes away further north and another outlet about 10 minutes away south at Jindalee. A petition opposing the grant of the applicant with 29 signatories was also submitted.

Submissions by the Commissioner

- 14 The Commissioner intervened to highlight the risks associated with the grant of the application and if approved, to have conditions imposed on the licence to minimise those risks.
- 15 According to the Commissioner, the influx of young families that represent the bulk of residents in the area give rise for a need to mitigate alcohol-related harms both in the present and future as the ‘fledgling’ locale matures and develops. The Commissioner expressed concerns about juveniles accessing liquor at the premises and possible thefts from the premises. It was submitted that in order to ensure the applicant is able to manage the premises in accordance with the Act and assist future policing in the locality, conditions relating to trading hours, CCTV, product tagging, product display, ID checks and dress standards be imposed on the licence.

Determination

- 16 Alkimos is a relatively new developing residential suburb along the northern corridor. The locality surrounding the proposed liquor store is substantially comprised of the suburbs of Alkimos and Eglinton. The estimated resident population for these suburbs in 2014 was 3,411 with an expected population growth to 53,114 by 2036. The proposed liquor store is to be located in the Shorehaven Coastal Village Centre, which will be a local convenience centre for residents and those passing on Marmion Avenue.
- 17 The Act imposes a burden on an applicant for the grant of a licence to satisfy the licensing authority that the grant of the application is in the public interest (refer s 38). 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).
- 18 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 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).
- 19 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.
- 20 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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- 21 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.
- 22 The applicant's evidence indicates that the proposed liquor store will be an added amenity to the locality, which is a developing residential estate. It will provide the community with a convenient outlet for the purchase of packaged liquor, with the nearest existing packaged liquor outlet almost 6km away by road. The population of the locality has increased from 163 in 2011 to almost 2,500 and further significant growth is expected. There is good support for the grant of the application from the local community.
- 23 In my view, the applicant's evidence establishes that the grant of the application would be catering to the requirements of consumers for liquor and related services (object 5(1)(c) of the Act), now and into the foreseeable future, and will facilitate the use development of licensed facilities reflecting the diversity of the requirements of consumers in the State (object 5(2)(a)).
- 24 In determining this application, I am also required to consider object 5(1)(b) of the Act, which relates to the minimisation of alcohol-related harm in the community. In this regard, I can only conclude from the evidence presented that the locality in which the premises is to operate does not experience an unacceptable rate of alcohol-related harm or the grant of the application would exacerbate the risk to any at-risk groups in the locality. From a socio-economic perspective, the locality is not disadvantaged.
- 25 The objectors have raised some concerns about traffic congestion and litter in the area. They also submitted a petition signed by 29 people opposing the application. While some members of the community do not support the application, other members of the community will find the proposed liquor store convenient for their packaged liquor purchases, with the proposed store being located in a shopping centre specifically designed to cater for the local convenience needs of the surrounding, and rapidly developing, community. Notwithstanding the protestations of the objectors, the provision of facilities and infrastructure in the locality is necessary to cater to the growing population. It may be that some members of the community have to tolerate a degree of inconvenience in the interests of the need of the community for a further licence of the type contemplated (refer *Vandeleur & Ors v Delbra Pty Ltd and Liquor Licensing Commissioner* 48 SASR 1988)
- 26 The burden of establishing the validity of any objection lies on the objector (refer s 73(10)). In my view, the objectors have provided no evidence to support their objection and their concerns are largely speculative. I find the objections have not been made out as required under the Act.
- 27 Accordingly, in weighing and balancing the evidence presented, I am satisfied the applicant has discharged its onus, as required under s 38(2) of the Act, and the grant of the application is in the public interest.

- 28 In respect of the conditions proposed by the Commissioner, the applicant submitted that it has a long established track record in the responsible service of alcohol at its licensed premises and there is no evidence to suggest the proposed store will be more vulnerable to theft or result in juveniles obtaining liquor. The applicant, in its PIA, has outlined various security measures that will be implemented, including the use of Llexan caps, and I have no reason to doubt the applicant in this regard. However, I note that the applicant has indicated that it will have a CCTV system in place. I am of the view that such a system should be compliant with the policies of the Director of Liquor Licensing relating to CCTV systems and a condition will be imposed accordingly.
- 29 Consequently, I am satisfied 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 12 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 22 June 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.

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.
- 30 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 31 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 32 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.

33 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