

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: OM MAHALAXMII WA PTY LTD

PREMISES: DAWESVILLE IGA LIQUOR

PREMISES ADDRESS: 3 DAWESVILLE ROAD, DAWESVILLE

APPLICATION ID: A000057306

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

DATE OF DETERMINATION: 21 JULY 2015

Introduction

- 1 On 16 January 2015, an application was lodged by OM Mahalaxmii WA Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be located at 3 Dawesville Road, Dawesville and known as Dawesville IGA Liquor. 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 to the grant of the application, however, pursuant to s 69 of the Act, the Commissioner of Police (Commissioner) lodged a notice of intervention.
- 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 parties are briefly summarised as follows.

Submissions on behalf of the applicant

- 4 The applicant submitted that Dawesville is a coastal suburb within the City of Mandurah located between the Peel Harvey Estuary and the Indian Ocean. Dawesville is 17km south of Mandurah and 87km south of Perth and is a developing suburb whose population has steadily increased over the last few years and is forecasted to grow in the coming years. The proposed liquor store is to be located adjacent to an IGA supermarket in the new Dawesville Shopping Centre, which is the only shopping centre in the local community.
- 5 According to the applicant, there are only two other liquor outlets in the locality, both of which are clubs and therefore only open to members. Consequently, there are no options for the general public to purchase packaged liquor in the locality, with the nearest packaged liquor facility being 3.9km away.
- 6 The applicant submitted a Public Interest Assessment (PIA) to support its application, which included information on the locality surrounding the proposed liquor store,

demographic profile of the community and the proposed manner of trade and services to be provided.

- 7 The applicant also submitted 44 witness questionnaires, which indicated that 79% of respondents supported the proposed application. The applicant submitted that the main themes to emerge from these questionnaires may be summarised as follows:
 - Dawesville has no packaged liquor facilities at this point in time;
 - currently, people in Dawesville have to shop for packaged liquor outside the locality;
 - the style of liquor store proposed will also offer the convenience of one-stop shopping because it is located in a shopping centre where there is an IGA supermarket. People can do all their shopping for liquor and food at the same time thereby saving time;
 - the liquor store will add positively to the amenity of the locality because it will provide a badly needed facility to an area which has grown enormously in population and has no shopping or packaged liquor services; and
 - the proposed liquor store will offer convenience and choice to visitors as well as residents.
- 8 Consequently, it was submitted that the services to be provided at the proposed liquor store are aimed towards the local community and the customers of the shopping centre and will contribute positively to the amenity of the locality.

Submissions on behalf of the Commissioner of Police

- 9 The Commissioner intervened in the application for the purpose of having conditions imposed on the licence in order to reduce the likelihood of crime and anti-social behaviour that may result from the operation of the premises.
- 10 In this regard, the Commissioner submitted that conditions relating to trading hours, general security measures and dress standards were appropriate in the circumstances of the application.

Determination

- 11 The applicant seeks to establish a moderately sized liquor store in the new Dawesville Shopping Centre. The development of the shopping centre is seen by the Mandurah City Council as “a potentially positive solution to the commercial shortage in retail provision in the area”.
- 12 Pursuant to s 38(2) of 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.

- 13 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).
- 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.
- 15 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.
- 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 applicant’s uncontested evidence is that Dawesville is a developing suburb; there are no other packaged liquor facilities for the public in the locality; residents have to travel some distance to obtain packaged liquor; the Dawesville Shopping Centre, in which the proposed liquor store will be located, is the only shopping centre in the area; and there is good support from the local community for the grant of the application.
- 18 In consideration of this evidence, I am of the view that the grant of the application would be catering to the requirements of consumers for liquor and related services, consistent with object 5(1)(c) of the Act. In respect of object 5(1)(b) of the Act (harm minimisation), there is no evidence before me to suggest the grant of the application will pose an unacceptable risk to the community.

- 19 Accordingly, I find that the applicant has discharged its onus under s 38(2) and the grant of the application is in the public interest. The conditional grant of the licence is 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 19 January 2015.
 - (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 20 July 2016 pursuant to s 62(4)(c) of the Act.

- 20 In respect of trading conditions to be imposed on the licence, I have had regard to the Commissioner's intervention and the applicant's submissions. Therefore, when the licence is issued, it will be subject to the following conditions:

Trading hours

The permitted trading hours are:

Monday to Saturday from 10 a.m. to 9 p.m.

No trading is permitted on Good Friday, Christmas Day or before 12 noon on ANZAC Day.

Trading

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

Electronic one-way swing gates are to be located at each entrance to the premises with only one entry and exit gate for each entrance.

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.

Dress standards – Outlaw Motorcycle Gangs

The following dress standard applies during the permitted trading hours:

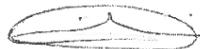
Jackets or any other clothing or accessory, or any clearly visible body marking, bearing patches or insignia of any Outlaw Motor Cycle Gangs not limited to, but including, the following listed Outlaw Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:

- (i) Coffin Cheaters;
- (ii) Club Deroes;
- (iii) Gods Garbage;
- (iv) Gypsy Jokers;
- (iv) Outlaws;
- (v) Finks;
- (vi) Rebels;
- (vii) Comancheroes;

- (ix) Hell's Angels;
- (x) Rock Machine; and
- (xi) Mongols.

A notice is to be displayed at all entrance to the licensed area/event reflecting this condition.

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