

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Seoul Mart City Pty Ltd
(represented by Mr Sunmin Yu, sole
Director and Member)

**Objectors present at the
hearing:** Commissioner of Police
(represented by Mr John Carroll of State
Solicitor's Office)

Mr Dongun Lee

Other objectors: As listed in Attachment A

Commission: Mr Eddie Watling (Acting Chairperson)
Mr Evan Shackleton (Member)
Mr Michael Egan (Member)

Matter: Application pursuant to section 25 of the
Liquor Control Act 1988 for a review of the
decision of the delegate of the Director of
Liquor Licensing to refuse an application for
a liquor store licence to Seoul Mart City Pty
Ltd.

Premises: Seoul Mart City, 542-544, Hay Street,
Perth

Date of Hearing: 15 July 2014

Date of Determination: 11 August 2014

Determination The application is dismissed and the
decision of the delegate of the Director of
Liquor Licensing is affirmed.

Authorities referred in the determination

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Busswater Pty Ltd v Director of Liquor Licensing* LC 17/2010
- *Harold Thomas James Blakely v Director of Liquor Licensing* LC 44/2010

Introduction

1. An application was made by Seoul Mart (“the applicant”) to the Director of Liquor Licensing (“the Director”) for a grant of a liquor store licence at the premises of Seoul Mart City, located at shops 4 and 5, 542-544 Hay Street, Perth.
2. The application is made pursuant to section 47 of the *Liquor Control Act 1988* (“the Act”).
3. The application was advertised in accordance with instructions issued by the Director and notices of objection were lodged by a number of individuals pursuant to section 73(2) of the Act (see paragraph 2 of Director’s decision A223971). However, only one of those objectors, Dongan LEE, attended the hearing. Mr Lee advised the Commission that he worked for the *CBD IGA Plus Liquor*, located at 556 Hay Street, Perth.
4. The Commissioner of Police (“the Police”) lodged a notice of objection out of time, however, the Director determined that it was in the public interest for the objection to be heard, pursuant to section 73(5) of the Act.
5. On 11 April 2014, the Director refused the application (see decision A223971).
6. On 9 May 2014, the applicant lodged an application for a review of the Director’s decision, pursuant to section 25 of the Act.
7. A hearing before the Commission was held on 15 July 2014.

Applicant’s submissions

8. The applicant is the proprietor of Seoul Mart City, a small Asian grocery store that is said to focus on providing fresh and good gourmet, including snacks, rice and Korean foods.
9. The applicant proposes to sell imported liquor, including beer, rice wines and Japanese sake. The applicant submitted that Soju is Korea’s most popular alcohol, and that many of his customers seek to purchase Soju with Korean barbeque products.
10. The applicant says that his customers wish to purchase both products at the same time, and that many complain that they have to go to another store to purchase their liquor. The applicant submits that his custom has dramatically reduced and that he will consider closing his business if his application is not granted.

11. He believes that he will continue to lose customers over time, as they will go elsewhere where they can purchase liquor, and their custom will be lost to his business.
12. In order to establish that the grant of this licence was in the public interest, the applicant lodged a Public Interest Assessment (“PIA”) together with a petition with 241 signatories and a letter of support from the operator of *Seoul Mart* in Victoria Park.
13. At the hearing, the applicant submitted that he would only sell five types of liquor, and accepted that the products he intended to sell were the same as IGA, but perhaps of a different brand. The applicant did not nominate the five types of liquor he intended to sell.

Objectors’ submissions

14. Most of the objectors submitted what appeared to be matching letters, stating that they are customers of *CBD IGA Plus Liquor*, and that they do not believe another Liquor Store in the same area is necessary.
15. The objections of Mr Grant Wilson and Ms Lara Uroseric rely upon those grounds of objection provided by section 74(1)(b) and (g), that the granting of the application would cause undue harm and annoyance, and lessen the amenity of the area.
16. The Police submitted that the applicant had failed to discharge his onus of establishing that the grant of the licence was in the public interest and that it would cause undue harm or ill-health to people, or any group of people, due to the use of liquor.
17. The Police submitted that by failing to clearly identify the applicant’s proposed manner of trade, the applicant had failed to demonstrate that the public interest would be served by the granting of the licence. Further, if the applicant’s manner of trade was only to sell Korean and Asian products, then the applicant had failed to establish how the provision of those products was in the public interest, given the two other stores in close proximity, were doing the same.
18. The Police submitted that in relation to section 38(4)(a) and (c) factors, the applicant’s PIA did not include Northbridge, and that it should have, particularly given the creation of the “Northbridge Link”, which will connect Perth and Northbridge.
- 20 The Police also submitted that there are a number of “at risk” groups in the locality, particularly in relation to the proximity of the District Court, the Central Law Courts (which houses the Drug Court), the Royal Perth Hospital, as well as other community service providers, resulting in certain “at risk” groups

frequenting the area with the potential to be harmed by the granting of the licence.

- 21 The Police submitted that the applicant's harm minimization strategies, submitted in its PIA, were too general to deal with those "at risk" groups, with the existing alcohol related harm in the area already demonstrating a high level of alcohol related violence, disturbance, disorder and offending.
- 22 The Police submitted that, as there is clearly already alcohol related harm in the area, it is the applicant's responsibility to articulate a plan for minimizing that harm, as well as demonstrating how any public interest factors outweigh the potential for further alcohol related harm in that locality.
- 23 It was submitted that the applicant has simply failed to address these questions in its PIA and therefore the Commission is not in a position where it can properly assess whether or not the grant of the licence will be in the public interest.

Determination

- 24 Section 25(2c) of the Act provides that when conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- 25 In conducting a review pursuant to section 25 of the Act, the Commission is not required to find an error in the Director's decision, and is required to undertake a full review of the merits of the materials before the Director and make its own determination based upon those materials (*Hancock v Executive Director of Public Health* [2008] WASC 224).
- 26 Pursuant to section 25(4) the Commission may:
 - (a) affirm, vary or quash the decision subject to the review;
 - (b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;
 - (c) give directions as to any questions of law reviewed, or to the Director to which effect shall be given; and
 - (d) make any incidental or ancillary order.
- 27 Section 38(2) of the Act provides that an applicant must satisfy the licensing authority that granting the application is in the public interest. There is a positive obligation on the applicant to discharge its onus.
- 28 It is not enough that an applicant express assertions or opinions about the public interest; any assertion or opinion must be supported by an appropriate level of evidence (*Busswater Pty Ltd v Director of Liquor Licensing*, LC 17/2010).


- 29 The private interests of an applicant do not equate to, and should not be confused with the public interest (*Harold Thomas James Blakely v Director of Liquor Licensing*, LC 44/2010).
- 30 The Commission accepts that a large numbers of “at risk” groups and individuals may frequent the area of the City in which the applicant’s premises are located, and that there is a high level of alcohol-related offences and anti-social behaviour in the suburb of Perth.
- 31 However, any increase in harm as a result of granting the application is likely to be mitigated by the fact the applicant’s licensed premises would be smaller in area and offer a far more limited range of products than the *CBD IGA Plus Liquor Store* nearby, which offers an extensive range of mainstream as well as Korean and Japanese liquor products.
- 32 Any likelihood of an increase in harm must be assessed having regard to the existing levels of alcohol-related offences and anti-social behaviour in the area, and weighed against those positive aspects of the application, if any.
- 33 The most positive aspect of the application discernible from the evidence is that the grant of the licence would provide a level of convenience for some of the existing customers of the applicant’s store (and, perhaps, a slight improvement in competition). However, even in this respect, a significant proportion of the petitioners (over 50%) reside outside the locality.
- 34 As a consequence, in addition to the option of purchasing specialty Korean and Japanese liquor products within the immediate vicinity of the applicant’s store, those petitioners who reside outside the locality most likely also have the option to purchase their specialty products from elsewhere in Perth. For example, some of the petitioners reside in Victoria Park where there is an existing specialty store.
- 35 Unfortunately, the evidence before the Commission is not of sufficient substance or probative value to enable the Commission to identify any demonstrable public benefit from the grant of the application either at all, or at least to an extent that it would outweigh the potential for an increase in the already high level of alcohol-related offences and anti-social behaviour in the immediate locality.
- 36 The burden of establishing the validity of an objection lies on the objector (section 73(10) of the Act). In Commission’s view the submissions lodged by the residential objectors, as well as the submission and oral presentation made by Mr Dongan Lee at the hearing, have not provided any cogent or relevant evidence to support their objection and therefore they have failed to discharge their obligation as required under section 73(10) of the Act.

37 In summary, the Commission finds that the application is predominantly based on private commercial interests. Further, the applicant's PIA and its submissions are confusing and sometimes contradictory, and unsupported by evidence. For example, at page 6, the suggestion was that the focus would be on Korean and Asian liquor, but at page 8, the suggestion was that the focus would be on local Western Australian products. The PIA also suggested that the focus would be on a large selection of international brands.

38 The PIA did not recognise, identify or distinguish any other liquor stores in the area, but later submissions identified that there were two liquor stores that currently sell Korean and Asian alcohol, being *CBD IGA Plus Liquor* and *Hi-Mart City*. *Hi-Mart City* is within 400 meters of the applicant's proposed store, and the other is even more proximate.

39 In those circumstances, the Commission cannot be satisfied that the grant of the application is in the public interest, pursuant to section 38(2) of the Act.

40 Accordingly, the application is refused.

A handwritten signature in black ink, appearing to read 'Eddie Watling', written in a cursive style.

EDDIE WATLING
ACTING CHAIRPERSON

Attachment A

- Ms Kym Jackson
- Ms Sharyn Law
- Gerardo Chiaradonna
- Yi Hee Lee
- Mr Sing Chon
- Mrs Ji Soo Chon
- Ms Lara Urosevice
- Mr Grant Wilson
- Michel Cho
- Daniel Cho
- Allan Ha
- James (no surname provided)