

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS PORT COOGEE

PREMISES ADDRESS: PORT COOGEE VILLAGE SHOPPING CENTRE CNR
ORSINO BOULEVARD & CALYPSO PARADE PORT
COOGEE

APPLICATION ID: A000176746

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

DATE OF DETERMINATION: 30 JUNE 2015

Introduction

- 1 On 1 April 2015 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 Port Coogee and located at the Port Coogee Village Shopping Centre, at the corner of Orsino Boulevard and Calypso Parade, Port Coogee. 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. There were no objections or interventions to the grant of the application.
- 3 Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers. The submissions and evidence of the applicant are briefly summarised as follows.

Submissions on behalf of the applicant

- 4 According to the applicant, The Port Coogee Village Shopping Centre (the Centre) is the first commercial and retail centre for the locality. It has been specifically planned as part of the Port Coogee development and will be located in the core of the “Marina Village Centre” and is part of stage 1 of a large retail/commercial development. The Marina Village is intended to provide a consolidated hub of retail and commercial activity to serve the shopping and entertainment needs of the local community. The proposed liquor store will be located in the Centre along with a supermarket and 16 other specialty tenancies.
- 5 The proposed liquor store will comprise an area of 182m² and trade under the “BWS – Beer Wine Spirits” brand. BWS is the applicant’s retail liquor brand that is focused on providing convenience retail packaged liquor services and facilities. The applicant submitted that currently there are no local retail packaged liquor facilities available to residents of Port Coogee. Residents currently have to travel a significant distance out

of their local area to buy a bottle of wine or other liquor products. The proposed liquor store will change this and will introduce a new, modern liquor store into a planned and purpose built shopping centre that is designed to provide local services and facilities to the surrounding community.

- 6 The applicant submitted a Public Interest Assessment which included a report from MGA Town Planners (the MGA report), a Health and Environment Report prepared by Caporn Services (Caporn report) and an Assessment of Community Attitudes prepared by West Coast Field Services (market survey).
- 7 According to the MGA report, it is estimated that at mid 2015, around 21,630 people will reside in the locality and by 2016; the population will increase to 22,110 people. It is expected that completion of the South Beach Village and Port Coogee developments and other Cockburn Coast developments will ultimately house an additional 10,000 people. Socio-economically, the locality is generally average, however, in the Coogee area, where the proposed liquor store is to be located, the Socio-Economic Index published by the ABS indicates the population is relatively well off.
- 8 Consequently, it was submitted by the applicant that the proposed liquor store will be strategically located in the retail precinct for Port Coogee and provide a convenient retail packaged liquor facility for consumers, who will be able to purchase their packaged liquor requirements at the same time as doing other shopping at the Centre.

Determination

- 9 Section 38(2) of the Act places a burden on an applicant for the grant of a liquor store licence to satisfy the licensing authority that the grant of the application is in the public interest. An applicant must therefore adduce sufficient evidence to discharge this burden.
- 10 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).
- 11 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).
- 12 The primary objects of the Act are:
 - to regulate the sale, supply and consumption of liquor;

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- 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.
- 13 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.
- 14 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.
- 15 Port Coogee is undergoing significant development and the proposed liquor store will be located in the Port Coogee Village Shopping Centre. The Centre will be part of a broader retail and commercial development for the area, forming the hub for the shopping and entertainment needs of the local community.
- 16 The proposed liquor store is modest in size and is designed as a convenience outlet for consumers using the Centre.
- 17 I have considered the applicant's evidence, including the expert reports, and I find that the proposed liquor store will cater to the packaged liquor requirements of the existing, and future population, of the area. Therefore, the grant of the application would be consistent with object 5(1)(c) of the Act and would also facilitate the use and development of licensed facilities reflecting the diversity of consumer requirements (object 5(2)(a) of the Act).
- 18 I must also be cognisant of the harm minimisation object of the Act when considering whether the grant of the application is in the public interest. The applicant's undisputed evidence is that the ABS' Socio-Economic Index for Coogee, where the proposed liquor store is to be located, indicates that the population is relatively well off. Also, crime and health data for the area does not reflect a community that could be regarded as being unacceptably "at-risk" from alcohol-related harm.
- 19 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.

- 20 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) 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 1 April 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 29 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.

Approval under s 104

The Turnover Rent Arrangement, between the licensee and Port Catherine Developments Pty Ltd, as detailed in the submissions dated 31 March 2015, is approved.

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.
- 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



Your Ref:

Our Ref: A000176746

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Dear Sir/Madam

**APPLICATION FOR THE CONDITIONAL GRANT OF A LIQUOR STORE LICENCE: BWS -
BEER WINE SPIRITS PORT COOGEE**

I refer to the application lodged by Woolworths Limited on 07 April 2015.

Please find enclosed a copy of the decision in respect of the above premises.

Should you have any queries regarding this please contact me on (08) 9425 1933.

Yours faithfully

Richard Duncan
CUSTOMER SERVICE OFFICER – ADMIN LAW

30 June 2015

cc: Liquor Enforcement Unit

[Enc]