

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT:	WOOLWORTHS LIMITED
PREMISES:	DAN MURPHY'S BRIGHTON
PREMISES ADDRESS:	BRIGHTON MARKETPLACE SHOPPING CENTRE, 150 CAMBORNE PARKWAY, BUTLER
APPLICATION ID:	A000057281
NATURE OF APPLICATION:	CONDITIONAL GRANT OF A LIQUOR STORE LICENCE
DATE OF DETERMINATION:	23 MAY 2016

Introduction

- 1 Woolworths Limited (the applicant) seeks the conditional grant of a liquor store licence for premises to be known as Dan Murphy's Brighton and located at the Brighton Market Place Shopping Centre, 150 Camborne Parkway, Butler. 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 to the grant of the application; however, pursuant to s 69 of the Act, the Commissioner of Police (the Commissioner) lodged a Notice of Intervention.
- 3 The application will be determined on the written material lodged 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.

The applicant's evidence and submissions

- 4 The applicant seeks to establish what can be generally characterised as a typical Dan Murphy's liquor store as part of the new Brighton Marketplace Shopping Centre (the Centre). The proposed liquor store will be a browse style facility of approximately 1,450m² carrying between 3,500 and 4,000 products.
- 5 According to the applicant, the Centre is a brand new shopping centre that has been specially planned as part of the Butler District Centre (BDC), which forms the commercial and retail shopping district that will follow Butler Boulevard between Marmion Avenue and Landbeach Boulevard. The BDC will provide around 54,000m² of commercial floor space including offices, showrooms, bulky goods retailing and warehousing. As a District Centre under the Western Australian Planning Commission State Planning Policy, the BDC will service a large catchment of up to 50,000 people with predominantly food and weekly shopping requirements. Development of the Centre will cost in the vicinity of \$80 million and create around 1,000 new jobs for the

local community. The Centre will be developed in stages, with stage 1 including a main shopping mall, a Woolworths supermarket and 19 specialty stores.

- 6 The applicant submitted a detailed Public Interest Assessment (PIA) to support its application. The PIA included the following reports:
 - a report prepared by MGA Town Planners;
 - a Health and Environment Report prepared by Caporn Services;
 - a trade area analysis prepared by MacroPlanDimasi; and
 - an assessment of community attitudes to the application prepared by West Coast Field Services.
- 7 It was submitted by the applicant that the proposed premises will integrate into the Centre in terms of land use, access, servicing and car parking. It will cater to a large proportion of consumers who like to purchase packaged liquor at the same time as doing other shopping at the Centre and also to those people who specifically seek out the services and facilities of a Dan Murphy's store.
- 8 According to the applicant, the population in the locality increased by 49% between 2006 and 2011 and will reach 41,000 in 2016, rising to 52,000 persons by 2021. Although there is a level of alcohol-related harm and ill-health in the locality, it was submitted that there is nothing to indicate the levels are greater than that experienced in any other area of Perth.
- 9 In acknowledging that there are a number of existing retail licensed premises in the locality, the applicant submitted that these are all convenience based outlets that offer constrained services and facilities, specifically designed to cater to limited local needs. In contrast, it was submitted that the proposed liquor store will provide a distinctive and unique matrix of retail packaged liquor services and facilities into the locality that are a class above the average liquor store and not currently offered in the locality.

The Commissioner's evidence and submissions

- 10 The Commissioner intervened because of concerns regarding the impact of the proposed premises on the community and recommended that if the application is granted, conditions be imposed on the licence to mitigate those concerns.
- 11 The Commissioner submitted that the suburb of Brighton and surrounding areas are evolving suburbs, currently undergoing rapid development in housing, infrastructure and services. 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. According to the Commissioner, while an analysis of the locality indicates a median socio-economic demographic, this positioning of the locality may shift over time, with the emergence of at-risk groups.

- 12 Consequently, the Commissioner recommended conditions relating to the use of licensed security, CCTV, advertising, ID checks and dress standards.

Determination

- 13 The law relating to the grant of a liquor store licence under the Act is well established and I need not repeat all the relevant provisions for the purposes of this decision. Suffice to say, pursuant to s 38(2) of the Act, the applicant must satisfy the licensing authority that grant of the application is in the public interest. The applicant must therefore adduce sufficient evidence to discharge this burden.
- 14 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).
- 15 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).
- 16 The applicant's submissions and evidence, including its expert reports, are uncontroverted. I have no reason to doubt the veracity of that evidence.
- 17 The proposed liquor store will operate both as a destination outlet and provide one-stop shopping convenience for persons using the Centre. Buss JA in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 stated that it is a notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres.
- 18 There is good community support for the grant of the application as evidenced in the survey conducted by West Coast Field Services. In particular, 86% of respondents who purchase liquor stated they would be likely to use the proposed liquor store and of this group, 63% stated they will do so as a specific trip (i.e. the main reason for going) with 44% stating they would go as part of a trip to the Woolworths supermarket.
- 19 I also note from the MacroPlanDimasi report that:
- the proposed Dan Murphy's store at Butler would service a primary trade area which contains a current residential population of 38,600, which is expected to increase to 62,800 people by 2026;
 - the proposed store is situated some 13.8km by road from the nearest existing Dan Murphy's store, located at Currumbine;

- the existing liquor stores within the defined primary trade area to be served by the proposed Dan Murphy's store are typical packaged liquor stores, mainly located in neighbourhood shopping centres or attached as drive-through facilities to hotels/taverns within the area; and
 - all of these existing facilities are demonstrably different to the proposed Dan Murphy's store to be provided at Butler, and are unable to offer the range, quality of wines or levels of service that would be offered by the proposed Dan Murphy's store.
- 20 Consequently, in consideration of the applicant's evidence and submissions overall, including the expert reports, I am of the view that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act. In respect of the harm minimisation object of the Act, there is nothing in the evidence before me to suggest the grant of the application poses an unacceptable risk to the community.
- 21 I am therefore satisfied that the applicant has discharged its onus under s 38(2) of the Act and the grant of the application is in the public interest.
- 22 In determining whether any specific conditions should be imposed on the licence, I have considered the Commissioner's submissions and the applicant's response to those submissions. In general, I accept the applicant's submissions that it will have in place various management practices to ameliorate the concerns of the Commissioner and therefore specific conditions are not necessary, at this point in time. However, given that the applicant will have in place a CCTV system, it is appropriate that this system complies with the policies of the Director of Liquor Licensing and I will therefore impose a condition reflecting this on the licence.
- 23 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 15 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 May 2017** 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.

Approval under s 104

The Turnover Rent Arrangement, between the licensee and Fabcot Pty Ltd, as detailed in the application lodged on 15 December 2014, is approved.

Tasting condition

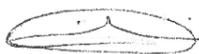
Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

- (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.

Compliance with harm minimisation policy

The licensee is to have a 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.

- 24 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 25 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 26 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