

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

Applicant: Cranbrook Food Services Pty Ltd

Intervener: Executive Director Public Health

Objectors: Mr & Mrs Luke & Helen Buffman
Mr Peter Denton
Mr & Mrs Bruce and Maxine White
Woodanookie Pty Ltd
*(all objectors represented by Jarrod Ryan of Talbot Olivier
Lawyers)*

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan (Member)
Dr Eric Isaachsen (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of decision A220049 of the Director of Liquor Licensing dated 8 March 2012

Premises: Cranbrook IGA, 13 Gathorne Street, Cranbrook

Date of Determination: 3 September 2012
(determined on papers)

Determination: The application is refused

Authorities referred to in Determination:

- *Hancock v Executive Director of Public Health [2008] WASC 224*
- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *Busswater Pty Ltd v Mr KV House and Mrs LV Verhoog (LC 17/2010)*

Background

- 1 On 7 July 2011, an application was lodged by Cranbrook Food Services Pty Ltd ("the applicant") for the conditional grant of a liquor store licence for premises to be known as "Cranbrook IGA" situated at 13 Gathorne Street, Cranbrook.
- 2 The application was advertised to the general public in accordance with instructions issued by the Director of Liquor Licensing ("the Director"). On 14 September 2011, the Shire of Cranbrook ("the Shire") lodged a notice of objection and on 15 September 2011 four more objections were received from Woodanookie Pty Ltd, Mr Peter Denton, Mr & Mrs Buffman and Mr & Mrs White ("the objectors").
- 3 A notice of intervention was lodged by the Delegate of the Executive Director of Public Health ("EDPH") on the 22 September 2011 recommending harm minimization conditions to be imposed on the licence.
- 4 By letter dated 23 November 2011 the applicant confirmed acceptance of all conditions outlined in the EDPH submission of 22 September 2012.
- 5 By letter dated 16 February 2011 the Shire withdrew its objection to the application.
- 6 On 8 March 2012, the Director by decision no. A220049 refused the application.
- 7 On 10 May 2012, the applicant lodged an application with the Liquor Commission ("the Commission") for a review of the Director's decision pursuant to section 25 of the *Liquor Control Act 1988* ("the Act").
- 8 Primary and responsive submissions from the applicant and the objectors were lodged with the Commission in relation to the review.
- 9 At the request of the applicant, the Commission considered the matter on papers.

Submissions on behalf of the applicant

- 10 The applicant's Public Interest Assessment ("PIA") asserts that the Cranbrook IGA will offer the local community a contemporary supermarket providing a greater range of products than are currently available. Through its application for a liquor store licence it seeks to supply a range of liquor products not currently available at other packaged liquor outlets within the locality, as well as showcasing local products thereby eliminating the need to travel a significant distance to satisfy the community's liquor requirements.
- 11 The store will have a surveillance system including cameras to the standard required pursuant to the Director's CCTV Security System at Licensed Premises Policy. Access to the area displaying and selling liquor will be restricted to one or two designated entry points. The area will be appropriately supervised to ensure access by minors is prevented.
- 12 The Cranbrook area is characterized by a small self contained community in which "at risk" groups are under-represented. The applicant states that enquiries with the local

police indicates minimal alcohol related crime.

- 13 The Cranbrook IGA store will meet the requirements of those members of the community who do not feel comfortable buying alcohol from the local hotel and who are not members of the local golf club, which are the only other sources of take away liquor in the Cranbrook town area.
- 14 As there would be no consumption of alcohol on the premises there is unlikely to be any increase in antisocial behavior if the licence were granted.
- 15 The central argument in favour of the application put forward by the applicant is the convenience of being able to buy liquor locally rather than making the 40 km trip to Mt Barker (assuming the potential purchaser does not wish to use the hotel or is not a member of the golf club).
- 16 The argument for convenience is further advanced by making liquor available for purchase with supermarket shopping and by more convenient hours of operation.
- 17 The store aims to showcase local liquor and liquor otherwise unobtainable like European beers and New Zealand wines.
- 18 There are not demonstrable negative aspects to the application. The applicant concedes that there will be an increased ability to purchase liquor which could lead to an increase in consumption.
- 19 The Local Government Authority has been supportive of the establishment of the supermarket.
- 20 Further to its PIA, the applicant lodged three letters of support including a private business, community member and the local golf club. Each spoke of the restricted range of liquor available in the town and the need to travel to access a wider variety.
- 21 The applicant had discussions with the EDPH with reference to the intervention and suggested four harm minimisation conditions. The applicant confirmed that it was supportive of all four conditions being imposed on the licence if granted. The EDPH requested a distinct delineation of the liquor section, a gated entry, no advertising of alcohol within the general area of the supermarket and 'ready to drink' products to be prohibited from display behind the till.
- 22 In relation to the application for review, the applicant submitted that the opposition to the application was motivated solely by commercial interest and was not based on public interest concerns. It remained that the access to take away alcohol in Cranbrook was quite restricted. The petition lodged by the objectors had been examined and it was submitted it ought to be treated cautiously given the objector's competitive interest in the refusal of the application. The applicant included a petition containing 182 signatures in support of the proposed liquor store along with his application for review.
- 23 The closing submissions on the review corrected facts stated by the objectors and noted

that the section 40 certificate issued by the Shire in August 2011 had not been withdrawn. The Shire had amended its view in relation to other aspects of the application but had not done so in regards to the section 40 certificate. The applicant reiterated that the Director in refusing the application did not believe that approving the licence would cause undue harm or ill health; undue offence, disturbance or inconvenience; nor that the amenity, quiet or good order would be lessened. In terms of the risk of alcohol consumption nearby after purchase, this was little different from the already present risk given the close proximity of the other points of alcohol sale to (a) the proposed store, and (b) the public areas in question.

Submissions on behalf of the Executive Director Public Health

- 24 The EDPH intervened for the purpose of making representations on the grounds of minimising harm or any ill-health to people, or any group of people, due to the consumption of liquor. The EDPH based its intervention on the 2006 census figures for Cranbrook residents; specifically the number of children aged 0-14, young people aged 15-24, and that 49.3% of the town's 458 person population were families with children.
- 25 The EDPH contacted the applicant and explained its concerns in relation to the integration of packaged liquor within the IGA supermarket. Four conditions were suggested for the licence to minimize the risk of harm:
- the liquor section to be distinctly delineated from the rest of the IGA Supermarket;
 - the proposed liquor section have a gated entry;
 - that any liquor displayed behind the till must not include RTD products; and
 - no advertising of alcohol to be displayed within the general area of the supermarket.

The EDPH acknowledged that the applicant was prepared to make some structural changes to the (then) un-built store.

Submissions on behalf of the objectors

- 26 The grounds of objection were that the grant would not be in the public interest, would cause undue harm or ill-health, would impact on the amenity/quiet/good order of the locality, and that the grant would be contrary to the Act.
- 27 Section 38(4) requires applicants to satisfy the authority that the application is in the public interest and must be supported by objective evidence. It is submitted that this had not been provided. Further, 148 residents had signed a petition, as submitted, that the IGA proposal would not be in Cranbrook's best interests; the harmful effects of the liquor store would outweigh any perceived benefits; and that the community's liquor needs are more than adequately met by the existing outlets.
- 28 The locations of other premises selling liquor within a 30 km radius of Cranbrook town were examined and it was submitted that this was more relevant to this particular locality,

compared with the 3 km as recommended by the Director's policy. In the view of the objectors the other premises sufficiently catered for the requirements of consumers for liquor in Cranbrook.

- 29 The objectors commented on the risk of harm or ill-health and submitted that the applicant had not adequately addressed these matters in its PIA. In addition it raised the issue of the purchase of alcohol at the proposed premises and consumption in nearby (public) areas, including a large park.
- 30 In the view of the objectors the section 40 certificate was not validly issued by the Shire. It supported this opinion by reference to the Minutes of the Council.
- 31 In closing submissions the objectors reiterated their earlier points and further commented on the potential for further harm or ill-health by reference to 'at risk' groups in Tambellup, (approximately 30 km from Cranbrook) and to the potential for consumption of alcohol in public areas of Cranbrook after purchasing liquor from the Cranbrook IGA store.
- 32 In primary and responsive submissions in relation to the review, the objectors commented on the lack of objective evidence in support of the application, submitted that mere convenience was not enough to grant an application and reiterated their view that current premises sufficiently cater for the requirements of consumers. Statistics for the Community Safety and Crime Prevention Profile for the Shire of Tambellup were included with the submission.

Determination

- 33 In conducting a review under section 25, the Commission is not constrained by a finding of error on the part of the Director, but is to undertake a full review of the materials before the Director and make its own decision on the basis of those materials (refer *Hancock-v-Executive Director of Public Health [2008] WASC 224*).
- 34 Pursuant to section 38(2) of the Act, an applicant for the grant of a liquor store licence must satisfy the licensing authority that granting the application is in the public interest.
- 35 Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations, (refer *Palace Securities Ltd v Director of Liquor Licensing (1992) 7 WAR 241*).
- 36 To discharge its onus under section 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community.
- 37 In this regard, it is not sufficient for an applicant to merely express opinions and make assertions about the perceived benefits of its application. Such opinions and assertions must be supported by an appropriate level of evidence, (refer *Busswater Pty Ltd v Mr KV House and Mrs LV Verhoog (LC 17/2010) at [36]*).
- 38 In this case, the applicant seeks to establish a liquor store to be situated within new

premises recently constructed within the town of Cranbrook. It is proposed to provide a range of liquor products not currently available at other packaged liquor outlets within the locality, as well as showcasing local products within a discrete section of the general supermarket. In its view the current availability of packaged alcohol in the town of Cranbrook is inadequate and poorly serves the local community.

- 39 Assertions relating to the perceived benefits to the public of the grant of the application were supported by three letters. In addition, at the review before the Commission a public petition in support of the application was lodged. As the petition was material that was not available to the Director at the time of the original determination, it cannot be considered under the review process as per the provisions of section 25(2) (c) of the Act.
- 40 Although the issue of the potential for harm and ill-health was the concern of the EDPH in its intervention, the objectors sought to further widen the harm and ill-health issues by reference to statistics relating to Tambellup, a town located approximately 30 km from Cranbrook. Community Safety and Crime Prevention Profile statistics for the Tambellup Shire were lodged during the review process as supporting evidence which were not considered as it was not material which was before the Director.
- 41 The Commission has significant reservations as to the petition opposing the application submitted by the objectors. It took a cautious view of the probative value of the petition as it appears to be motivated by commercial interests, particularly in having a demonstrable interest in preventing further competition in respect of their current practices as a seller of liquor.
- 42 Furthermore the nature of the petition, in particular the framing of the questions lacked any probative value. The first question simply begs the question; the second question is expresses an opinion without offering any supporting evidence and the third question relates to the need for the outlet which is not a ground for the granting or refusing of a licence under the Act. At best the petition could be said to demonstrate some opposition to the store but could not be deemed to provide any supporting evidence against the grant of the application.
- 43 Thus the Commission held that the objections in relation to undue harm or ill-health; undue offence, disturbance or inconvenience; or the disturbance or lessening of amenity, quiet or good order of the locality were not made out.
- 44 The submission by the objectors in relation to the validity of the section 40 certificate was not accepted by the Commission. It is not within the remit of the Commission to determine or comment on the process by which the Local Government Authority conducts its planning determinations.
- 45 It is necessary for the applicant to provide evidence in support of its application to discharge its obligations under the Act i.e. the onus is on the applicant to demonstrate that the grant is in the public interest. It is fair to say that the applicant has amply demonstrated that the granting of the application is not contrary to the public interest but the Act clearly requires the applicant to go further than this and demonstrate in a positive sense that the grant of the application would further the public interest.

- 46 Examination of all the material presented in relation to this application does not constitute sufficient evidence that the applicant has discharged his onus of proof.
- 47 The application is therefore refused.

A handwritten signature in black ink, appearing to read 'J. Freemantle', written over a horizontal line.

**MR JIM FREEMANTLE
CHAIRPERSON**