

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Woolworths Ltd
(represented by Mr Gavin Crocket of G D Crocket & Co)

First Intervener: Director of Liquor Licensing
(represented by Mr Sam Nunn of State Solicitor's Office)

Second Intervener: Commissioner of Police WA
(represented by Ms Leanne Atkins)

Objector: Mr Barry and Ms Esther Miles

Commission: Mr Jim Freemantle (Chairperson)
Mr Eddie Watling
Dr Eric Isaachsen

Date of Hearing: 1 March 2011

Date of Determination: 18 April 2011

Premises: Woolworths Liquor, Warnbro Warnbro Fair Shopping Centre
Corner Warnbro Sound Avenue and Palm Springs
Boulevard, Warnbro.

Matter: Application for a Liquor Store Licence referred under section
24 of the *Liquor Control Act 1988*

Determination: The application is approved

Authorities Considered in Determination

- *Palace Securities v Director of Liquor Licensing (1992) 7 WAR 241 per Malcolm CJ*
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258*
- *Executive Director of Public Health v Lily Creek International & Ors [2001] WASCA 410*

Introduction

1. On 18 March 2010 an application was lodged by Woolworths Limited (“The Applicant”) for the conditional grant of a liquor store licence for premises to be known as Woolworths Liquor Warnbro and located at the Warnbro Fair Shopping Centre, corner of Warnbro Sound Avenue and Palm Springs Boulevard, Warnbro.
2. The application was advertised to the public in accordance with instructions issued by the Director of Liquor Licensing and objections to the application were lodged by Tintoc Pty Ltd and Barry and Esther Miles. A Notice of Intervention was lodged by the Commissioner of Police.
3. Pursuant to section 24 of the *Liquor Control Act 1988* (“the Act”) the Director of Liquor Licensing referred the application to the Commission for determination. When referring this application to the Commission, the Director also referred an application by Lima Lima Pty Ltd for the conditional grant of a liquor store licence at 397 Warnbro Sound Avenue, Port Kennedy with a recommendation that the two applications be heard together due to the proximity of the proposed stores. However, at a Directions Hearing held on 15 November 2010 the Commission directed that the applications be heard and determined separately.
4. Pursuant to section 69(11) of the Act the Director lodged a Notice of Intervention in respect of the application.
5. Tintoc Pty Ltd subsequently withdrew its objection.
6. A hearing before the Commission was held on 1 March 2011.

Submissions by the Applicant

7. The Applicant seeks to open a new liquor store within its existing Woolworths Supermarket at the Warnbro Fair Shopping Centre. The proposed liquor store will form part of and be an additional department of the supermarket. The proposed store will occupy an area of approximately 151m² and is designed to service the packaged liquor requirements of people doing their grocery shopping at the supermarket or visiting the shopping centre.
8. It is proposed that the store would provide a large, diverse and quality product range, comprising of approximately 1300 lines which would include local and imported beers, fine wines, spirits and liqueurs.
9. The Applicant’s Public Interest Assessment (“PIA”) lodged in support of the application addressed in detail the matters set out in section 38(4) of the Act. Furthermore, in order to address the requirements of sections 33(1) and 38 of the Act, the Applicant undertook an extensive empirical study which involved:
 - investigations into the nature of the locality;

- field assessments and site visits;
 - research and analysis of demographic data for the locality, publicly available data on alcohol related harm, health and crime, and relevant literature;
 - a review of existing packaged liquor outlets in the locality; and
 - a market survey.
10. The PIA also included a town planning report (the MGA Report) and an environmental and health assessment (the Caporn Report).
11. Some of the key findings from the MGA report included:
- the locality is a newly established area of Perth with services and facilities typical of an urban area;
 - the Warnbro Fair Shopping Centre is the premier retail hub of the locality containing 11, 383 m² of retail floor space and anchored by a Woolworths Supermarket and a Coles Supermarket. There are approximately 42 other specialty shops in the Centre;
 - the Centre is a popular shopping destination, with over 2 million people visiting the centre in the year ending June 2009; and
 - the Centre is strategically located with access of Warnbro Sound Avenue, which is one of the primary roads in the locality thereby providing easy access from all parts of the locality.
12. The MGA Report also identified that there are currently six packaged liquor outlets in the locality and provided an overview and analysis of the services provided at each outlet. In respect of these premises:
- all except one (which does not appear to have a dedicated packaged liquor section) provide convenient packaged liquor services. In essence, they service the packaged liquor requirements of their local neighbourhood;
 - three are dedicated liquor stores;
 - three are taverns, two of which have attached drive-through bottle shops; and
 - none is directly located next to a major supermarket.
13. Importantly, it was submitted that the locality has experienced considerable growth over the last 10 years. The last liquor store licence granted in the locality was in 2001 when the population of the locality was approximately 19,445 persons. It is estimated that the current population of this locality is 28, 300

people, an increase of almost 45%.

14. In November 2009 the applicant commissioned an independent market research company to carry out a market survey to obtain the views of the community on the application and the premises. The market survey involved face to face interviews of customers of the Woolworths Supermarket at the Centre. In total 409 customers were interviewed with some of the key results of the survey being:
 - 70% of respondents considered the premises a good idea;
 - Convenience and better prices through increased competition were the primary reasons why respondents were in favour of the premises; and
 - There is a high consumer demand for packaged liquor in the locality, with 4 out of 5 respondents stating they purchased packaged liquor.

Submissions by the Objector

15. Barry Miles and Esther Miles submitted a short letter as their objection stating that there are already sufficient premises in the area for people to obtain alcohol and expressed general concern about alcohol related harm in the community.

Submissions by the Commissioner of Police

16. The Commissioner of Police intervened in the application pursuant to section 69(6)(c)(ii) of the Act and asserted that the grant of the application is not in the public interest and if the application was granted harm or ill-health may be caused to people or any group of people due to the use of liquor.
17. It was submitted that there are no cogent public interest considerations to justify the grant of the application and it would be contrary to the policy and underlying principles of the Act. Basically, the application should be refused because:
 - the grant of the application is not necessary in order to provide for the requirements of the public because the licensed premises in and near the affected area are sufficient to meet the requirements of the public in the affected area;
 - there are a number of licensed premises authorised to sell liquor for consumption off licensed premises already existing in the affected area which are in close proximity to the Objector's premises which are convenient and which the public in the affected area find convenient to use;
 - the grant of the application would otherwise be contrary to the Act and contrary to the intention of the Act because there are already sufficient licensed premises within the affected area trading during sufficient hours to meet the reasonable requirements of the public for liquor; and

- if the application was to be granted, licensed premises and/or facilities would be unnecessarily duplicated contrary to the object, spirit and intent of the Act.
18. Police incident reports were also submitted which reflected some general criminality in the area.

Submissions on behalf of the Director of Liquor Licensing

19. The basis of the intervention by the Director of Liquor Licensing was:
- the proximity of the proposed premises to existing premises; and
 - the potential for an increase in alcohol-related harm or ill-health.
20. Pursuant to section 69(8a) of the Act the Director of Liquor Licensing, prior to referring this application to the Commission for determination, requested the Executive Director of Public Health (EDPH) to provide a report on the harm or ill-health caused to people, or any group of people residing in or resorting to the locality due to the use of liquor and the impact that granting this application and/or the Lima Lima Pty Ltd application (refer paragraph 3 above) would have on that harm or ill-health. That report was provided to the parties and the Commission and relied upon by the Director of Liquor Licensing to support his intervention.
21. The Director of Liquor Licensing acknowledged that the EDPH's report largely addressed the combined effect of this application and the Lima Lima Pty Ltd application as applications in close proximity to each other. As a consequence of the two applications being heard separately and not together as originally contemplated, this aspect of the EDPH's report no longer holds significant currency.
22. Nonetheless, the report does address the issue of harm in the locality and at risk groups in the area. Information was also provided on the issue of young people and alcohol related harm.
23. The Director of Liquor Licensing also relied on evidence in the form of incident reports lodged by Tintoc Pty Ltd (who originally objected to the application). It was submitted that notwithstanding that Tintoc Pty Ltd subsequently withdrew its objection its evidence remains before the Commission and the Commission may have regard to that evidence. In this regard, Tintoc Pty Ltd provided evidence relating to occurrences where juveniles have attempted to purchase liquor from its liquor store and it was therefore submitted this evidence indicates that there is already a significant interaction between juveniles and licensed premises within the immediate area of the Applicant's proposed premises.
24. Concern was also expressed by the Director of Liquor Licensing in respect of the possible proliferation of liquor outlets in the area of the proposed premises if the application was granted. There are already six liquor outlets in the locality with the two closest identified as St Clair Liquor Store (approximately 1 km away) and the

Warnbro Fair Liquor Store (approximately 200 metres away). It was asserted that the purported justification for the application is already being fulfilled by existing outlets.

25. It was submitted that the potential for even a minimal increase in the risk of alcohol-related harm and the proximity to existing outlets of a similar, although not identical, nature are relevant factors to be considered by the Commission.

Responsive Submissions by the Applicant

26. The Applicant submits that the grant of the licence would not result in the proliferation of licences in the area because there has been a significant increase in the population of the locality in the past ten years and the grant of the licence will provide a one-stop shopping facility at the Warnbro Fair Shopping Centre which is currently unavailable in the locality.
27. When consideration is given to the Applicant's PIA and supporting evidence it clearly demonstrates a strong public interest consideration in establishing a liquor store at the Warnbro Fair Shopping Centre as part of the existing Woolworths Supermarket.
28. The material information referred to by the Interveners, particularly with reference to the report from the EDPH, fails to address any identifiable "at risk group" in the locality or establish a "causal link" between the grant of this application and potential harm or ill-health being caused in the community. There is no evidence that the health of the two million people visiting the shopping centre annually will be significantly impacted upon because of the existing packaged liquor outlets in the locality. Similarly, there is no evidence to suggest there are "at risk" groups who use the shopping centre would suffer any impact if the application was granted.
29. The police CAD data indicates that crime in the area is very low when weighed against the 2 million people who are visiting the shopping centre every year.
30. According to the Applicant, the EDPH report fails to establish any nexus between:
 - the proposed Woolworths Liquor store at the Warnbro Fair Shopping Centre and liquor related harm or ill-health in the locality; or
 - the sale of packaged liquor in the locality and the existing or alleged related crime and social health of the locality.

Determination

31. 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.
32. In discharging 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.
33. When considering the public interest, consideration of both sections 5 and 38 of the Act are relevant when making the decision (refer *Palace Securities v Director of Liquor Licensing (1992) 7 WAR 241 per Malcolm CJ*).
34. Furthermore, pursuant to section 33(1), the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest; the discretion being confined only by scope and purpose of the act (refer *Palace Securities supra*).
35. In respect of this application, the Applicant proposes to establish a liquor store as part of its existing supermarket, which is located within the Warnbro Fair Shopping Centre. The Warnbro Fair Shopping Centre is the retail hub of the locality with approximately 2 million people visiting the Centre each year. The Applicant has provided evidence that there is a demand by persons attending the Shopping Centre, and the Woolworths Supermarket, to be able to purchase packaged liquor while doing their grocery shopping. The application is essentially predicated on the convenience to the public of one-stop-shopping. It should also be noted that the population of the area has increased substantially over the last ten years, however the last liquor store licence granted in the area was in 2001. It is unlikely that persons other than patrons of the shopping centre would be attracted to the store.
36. The Applicant has also provided an array of evidence to address the matters set out in section 38(4) of the Act and to demonstrate the benefits to the community.
37. The objection lodged by Barry and Esther Miles was generic in content and not supported by any evidence. Mr and Mrs Miles did not avail themselves of the opportunity to lodge any further submissions or evidence to support their objection and did not participate in the hearing of the application. The Commission finds that these objectors have failed to establish their grounds of objection as required under section 73(10) of the act.
38. The Interveners have sought to assist the Commission by bringing to its attention information about the possible negative impact that the grant of the application may have on the local community, particularly from a harm and ill-health perspective.
39. It is not uncommon when determining the merits of an application that tension may arise between the various objects of the Act, particularly objects 5(1)(b) and

5(1)(c). In such circumstances, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

40. The potential for harm or ill-health is a powerful public interest consideration when determining an application (refer *Lily Creek supra*). Consequently, it is relevant for the licensing authority to consider the level of alcohol-related harm, due to the use of liquor, which is likely to result from the grant of the application. As Wheeler J stated in *Executive Director of Public Health v Lily Creek International & Ors* [2001] WASCA 410:

“This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it seems to me that must necessarily be assessed against any existing harm or ill health so as to assess the overall level which is likely to result if a particular application is granted. Where, as occurs in probably the majority of cases, the existing level of alcohol related harm is no greater than that which appears to be commonly accepted in the community, the distinction is probably not significant.”

41. Also, as observed by Ipp J (in *Lily Creek supra*) it is significant that the primary object in section 5(1)(b) is to “minimize” harm or ill-health, not to prevent harm or ill-health absolutely.
42. The Commission finds that the evidence presented by the Interveners indicates that existing levels of harm in the area of the proposed licensed premises the subject of this application, is no greater than that commonly found in the community.
43. Therefore, when weighing and balancing the competing interests presented by the Applicant and the Interveners, the Commission is satisfied that the grant of the application is unlikely to have any discernable negative impact on the local community and the overall positive aspects of the grant of the application outweigh any potential negative impact that the grant of the application may have on existing levels of harm in the area.
44. The Commission is satisfied that the Applicant has discharged its onus under section 38 of the Act and the grant of the licence is in the public interest. The Commission is also satisfied that the Applicant has complied with all necessary statutory criteria, requirements and conditions precedent to the application being granted.
45. Accordingly, pursuant to section 62 of the Act, a liquor store licence is conditionally granted to the Applicant for premises to be known as Woolworths Liquor Warnbro and located at the Warnbro Fair Shopping Centre, corner of Warnbro Sound Avenue and Palm Springs Boulevard, Warnbro subject to the premises being completed in accordance with the plans and specifications lodged; the holder of the conditionally granted licence seeking confirmation of the grant within 12 months and the standard conditions imposed by the Director of

Liquor Licensing.

46. Finally, pursuant to section 104 of the Act, the Commission also approves of the profit sharing arrangement between the Applicant and the landlord of the premises as set out in the lease document submitted with the application.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a vertical stroke.

JIM FREEMANTLE
CHAIRPERSON