

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Ivorybow Pty Ltd trading as 'Liquor Barons Lesmurdie'
(represented by Mr Ed Rennie of Tolson & Co)
- Premises:** Woolworths Liquor - Kalamunda
(represented by Mr G Crockett of G.D. Crockett & Co)
- Commission:** J.M. Freemantle (Chairperson)
D. Warnock, E Watling (Members)
- Date of Hearing:** 12 June 2008
- Date of Determination:** 1 July 2008
- Observers:** Messrs Andrew Pollard and Stephen Vernall from
Woolworths Liquor and Mr Les Wall from Liquor
Barons.

Authorities referred to:

- *O'Sullivan & Farrer (1989) 168 CLR 210*
- *Executive Director of Health & Lily Creek*
- *International & others (2000) WASCA 258*

Application:

This is an application for a Review of the Decision by the Director of Liquor Licensing No. A186948 of 5 February 2008 under section 25 of the *Liquor Control Act 1988* to grant Licence No. 11914 to Woolworths Liquor Kalamunda for premises situated at Shop 5, 123 Canning Road, Kalamunda to conduct the sale of packaged liquor.

Determination:

The Commission has determined pursuant to section 25(4) of the *Liquor Control Act 1988* to affirm the decision of the Director of Liquor Licensing.

Reasons:

The Application for a review under section 25 of the Act was based on the following three grounds.

1. The Director erred in concluding that the grant of the application is in the public interest.
2. The Director erred in concluding that the respondent Woolworths Limited satisfied the requirements of section 38 of the Liquor Control Act.
3. The Director erred in not providing sufficient weight to the grounds of objection raised by the applicant Ivorybow Pty Ltd and in particular by not giving sufficient weight to the following matters:
 - (a) the rates and general trend in alcohol related hospital admission in the local area;
 - (b) the risk age group of 14-25 years in their local area;
 - (c) the increased likelihood of crime and anti-social behaviour with the increased availability of liquor in the local area;
 - (d) the already sufficient number of package liquor outlets already existing in the local area.

Each of the three grounds for objection relate to section 38 of the Act, specifically section 38(4)(a), (b), (c), and (d).

The Applicant contended that the Public Interest Assessment (PIA) submitted by Woolworths Limited did not sufficiently address the requirements as specified in section 38(4) of the Act.

It was contended that the PIA was deficient in that:

- (i) the wrong age group was used in risk assessment research;
- (ii) there was no acknowledgement of the indigenous risk group;
- (iii) there was no confirmation that the schools of the locality had been contacted;
and
- (iv) the locality definition had not been applied correctly.

The Commission has examined all papers and is satisfied that PIA submitted by Woolworths Limited sufficiently addressed the requirements of section 38(4) of the Act.

The Commission has further reviewed the submissions made by both parties during the Hearing and is satisfied that:

- i. The granting of a liquor store license in this locality in association with a Woolworths Limited grocery store will provide an additional public amenity and given the points made below is in the public interest;

Mr Rennie argued that because of the nature of the area a broad rather than a narrow definition of locality should apply and the Commission whilst fully aware of (and Mr Crockett reinforced) the Policy Guidelines, (particularly the 3km radius guideline) accepted that the affected locality went beyond a 3km radius.

This did not alter the view of the Commission that the original approval added to the amenity of the locality (as broadly defined).

Whilst the *Liquor Control Act 1988* does not specifically define public interest, section 38(4) gives a broad guide of the issues to be addressed in determining whether a licence is in the public interest and in the view of the Commission gives the Director of Liquor Licensing wide ranging power to take into account a wide variety of matters.

This view is consistent with the principles laid down in *O'Sullivan & Farrer (1989) 168 CLR*.

- ii. The issues of harm or ill-health, impact on amenity and offence, annoyance, disturbance or inconvenience, as specified in section 38(4) of the Act, have been adequately evaluated and on the balance of probabilities, have passed the public interest test.

The Commission took into account the fact that there appears to have been little broad based objection by residents of the area.

In respect of the objection lodged by B & A Murton, the essentials of the objection related to issues which are present irrespective of whether the premises are licensed or not.

The Commission considered the claim that noise, rubbish, diesel fumes and the dangers and inconvenience attendant on large delivery trucks operating at all hours detracted from the amenity of the immediate/abutting residential area but this is not affected one way or another whether the premises or part of them are licensed or otherwise.

The Commission does not accept the arguments presented that the Woolworths Limited liquor store license will have such an adverse impact on the locality that the license should not have been granted.

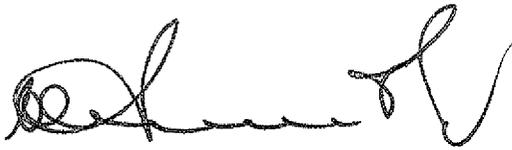
- iii. That the Director has acted in accordance with section 16(1)(b) of the Act in that the licensing authority may;
 - (i) obtain information as to any question that arises for decision in such manner as it thinks fit; and
 - (ii) make its determination on the balance of probabilities.
- iv. That the primary objects of the Act, section 5(1):
 - (a) to regulate the sale supply and consumption of liquor; and
 - (b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - (c) to cater for the requirements of consumers for liquor and related services, with regard to proper development of the liquor industry, the tourism industry and other hospitality industries in the state.

have been applied in a balanced approach in accordance with the overall provisions of the Act.

v. That the Director did not err in concluding:

"The validity of the conjectures made in Grounds 1 and 2 have not been established and I am satisfied on the balance of probabilities, that pursuant to section 38(2) of the Liquor Control Act 1988, the grant of the application is in the public interest".

Costs: Costs are determined at \$2000 and to be met by the Applicant.



J.M FREEMANTLE