

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

- Applicant:** Liquorland (Australia) Pty Ltd  
*(represented by Mr Steve Standing and Ms Triska Di Cicco of Herbert Smith Freehills)*
- First intervener:** Commissioner of Police  
*(represented by Ms Gillian Bailey of State Solicitor's Office)*
- Second intervener:** Director of Liquor Licensing  
*(represented by Ms Gillian Bailey of State Solicitor's Office and Mr Peter Minchin of Department of Racing, Gaming and Liquor)*
- Objectors:**
- Eremis Pty Ltd and N-Style Pty Ltd  
*(represented by Mr Phil Cockman of Canford Hospitality Consultants Pty Ltd)*
  - Robert Perks (in attendance at the hearing)
  - Marion and Trevor Prowse
  - Jennifer O'Byrne
  - Bonnie Knop
  - Jon Abbs
  - Gregory Mason
  - Darren Wright
  - Kenneth Noble
  - Nona Garton
- Commission:** Mr Eddie Watling (Presiding Member)  
Ms Helen Cogan (Member)  
Mr Michael Egan (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of the decision of the Delegate of the Director of Liquor Licensing to refuse the conditional grant of a liquor store licence for premises to be known as "Liquorland South Bunbury".

**Premises:** Liquorland South Bunbury, Parks Shopping Centre, 22 Hamersley Drive, South Bunbury.

**Date of Hearing:** 8 June 2015

**Date of Determination:** 29 July 2015

**Determination:** The application is refused.

**Authorities referred to in determination:**

- *Windrush Holdings Pty Ltd v Parkview Enterprises Pty Ltd & Others* (LC 04/2015)
- *Director of Liquor Licensing v Kordister* [2011] VSC 207
- *Hancock v Executive Director of Public Health* [2008] WASC 22
- *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175
- *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241
- *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142
- *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WACA 258
- *Hay Properties Pty Ltd v Roshel Pty Ltd* (unreported, WASC, 20 July 1998)
- *Liquorland (Aust) P/L v Hawkins* 16 WAR 325
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51
- *Riley Enterprises (WA) Pty Ltd* (LC 38 /2014)

## Background

- 1 On 24 June 2014, Liquorland (Australia) Pty Ltd (“the applicant”) lodged an application for the conditional grant of a liquor store licence in respect of premises located at the Parks Shopping Centre (“the Centre”) at 22 Hamersley Drive, South Bunbury, to be known as Liquorland South Bunbury (“the premises”).
- 2 The Public Interest Assessment (“the PIA”) accompanying the application describes the Centre as comprising a number of buildings surrounded by car park bays, a Coles Supermarket, a K-Mart discount department store and around 20 specialty shops, including a newsagency, hairdressers and bakery as well as other convenience retail outlets; more specifically, a petrol station, fast food outlets and a tavern (and drive through bottle shop) fronting Bussell Highway.
- 3 The proposed store is to be located immediately adjacent to the Coles supermarket with two entrances, one directly across from the Coles supermarket checkouts and the other accessible from the car park.
- 4 The application was advertised to the general public in accordance with instructions issued by the Director.
- 5 On 18 August 2014, the Commissioner of Police (“the Police”) lodged a notice of intervention pursuant to section 69 of the *Liquor Control Act 1988* (“the Act”).
- 6 During August 2014, a number of objections were lodged, pursuant to sections 73 and 74 of the Act including one by Canford Hospitality Consultants Pty Ltd representing the licensee (“N-Style Pty Ltd”) and landlord (“Eremis Pty Ltd”) of the Frankel Street Liquor and Fine Wines liquor store located within the locality (“licensee objectors”) and a further nine objections by individuals, some of whom live in the locality (“the residential objectors”). The locality is an area defined by a 3km radius from the proposed store.
- 7 The Delegate of the Director of Liquor Licensing (“the Director”) considered the application on the papers pursuant to sections 13 and 16 of the Act and determined to refuse the application with reasons published in decision A224951 dated 10 March 2015.
- 8 On 9 April 2015, the applicant lodged an application, pursuant to section 25 of the Act, for a review of the decision of the Director to refuse the application.
- 9 On 22 April 2015, in accordance with section 69(11) of the Act, the Director lodged a notice of intervention in respect of the review and on 25 May 2015, lodged a submission in support of the intervention.
- 10 On 25 May 2015, the Police and licensee objectors also lodged submissions in relation to the review.
- 11 A hearing before the Commission was held on 8 June 2015.

## Submissions on behalf of the applicant

12 The grounds in support of the application for a review of the Director's decision are as follows:

*"1. There is a coherent body of persuasive evidence that the grant of this application would be in the public interest –*

- a. the surveys relied upon by the Applicant are independent, objective and representative, and comprise logical and probative evidence that the grant of this application would cater for the requirement of a significant group of consumers for the convenience of being able to buy liquor at a liquor store located within the Parks Shopping centre (including in conjunction with the purchase of other goods and services);*
- b. the survey evidence also shows that there are diverse consumer requirements in the locality which are not reflected in the existing licensed premises.*

*2. There is no coherent body of persuasive evidence that the grant of this application would not be in the public interest. In particular –*

- a. whilst there is evidence that some suburbs within the locality have elevated levels of social disadvantage, that is of little or no significance given that those suburbs (and the locality generally) have lower than average levels of existing alcohol related harm and offending;*
- b. there is in any event no evidence connecting this particular liquor store to an increased risk of alcohol related harm to anyone. In this respect –*

- i. the proposed liquor store will be of only a small to moderate size, and will be operated responsibly;*
- ii. there was no objection from any provider of services to 'at risk' groups (and the Executive Director of Public Health chose not to intervene);*
- iii. there was evidence that the majority of service providers did not anticipate the proposed new store having any adverse impact; and*
- iv. no-one has articulated any reasoned argument (based on expertise or experience) as to how this particular store might materially increase the risk of alcohol related harm or ill-health to people or any group of people.*

*3. Accordingly, on a proper construction of the Act and upon the evidence before it, the Licensing Authority should find that it is in the public interest to grant the application."*

- 13 The comprehensive PIA submitted with the application was accompanied by, among other references and documents:
- 1) a statement from the Manager, Operations, for Liquorland Western Australia outlining the operations of Liquorland stores generally and the proposed store in particular;
  - 2) a report prepared by MGA Town Planners (“the MGA Report”) on the town planning and demographic aspects of the application and locality, including the “at risk” groups and other licensed premises in the area;
  - 3) a report prepared by Data Analysis Australia on a telephone survey of residents within the locality and an intercept survey of shoppers at the Centre (“the DAA Report”); and
  - 4) a letter from the Director of Bodhi Alliance Pty Ltd on the results of extensive consultation, including interviews, with representatives of key community stakeholders, service providers and sensitive premises in the locality (“the Bodhi Report”).
- 14 The locality in which the proposed store is to be located comprises the suburbs of Carey Park (the suburb in which the store is to be situated), South Bunbury, Withers, Usher, College Grove, Davenport, East Bunbury, Bunbury and Glen Iris with a combined population of around 23,000. The suburbs in closest proximity to the proposed store are Carey Park, Withers and South Bunbury.
- 15 It was submitted that the proposed store will be similar to other Liquorland stores, in this case with a selling area of 107 square metres, carrying a range of packaged liquor specifically selected for the proposed store and its customers, including all advertised Liquorland specials.
- 16 The applicant submits that Liquorland stores are designed to cater for the diverse requirements of consumers for the purchase of packaged liquor, recognising that some consumers value “one-stop shopping convenience”, as well as the opportunity to compare prices between competing stores and to purchase packaged liquor from a national brand outlet. This type of service, the applicant contends by reference to the MGA Report, is to be expected in an activity centre having the role of serving the daily and weekly needs of residents.
- 17 Based on the MGA Report, the applicant submits that:
- 1) “there are no significant concentrations of “at risk” groups in the locality”;
  - 2) “the locality populations feature an average measure of socio-economic advantage/disadvantage” as indicated by the Socio-Economic Index for Areas (SEIFA);

- 3) “the locality may be considered a relatively low-moderate risk community” and is “not experiencing a significant level of socio-economic disadvantage”.
- 18 The MGA Report also identifies an unemployment rate in the locality of 6.3% (compared to 4.7% for the State) and incomes and fully owned residential dwellings below the State average. It was submitted that this may be a result of the age profile of the locality which featured a higher proportion of those aged 65 and over (15.8%) than the Country WA average (11.5%).
- 19 It is submitted by the applicant that any potential negative impact on the amenity of the locality from the grant of this application will be outweighed by the convenience and service the proposed store will provide for residents, the local workforce and visitors to the Centre, and the local employment opportunities generated. In particular, in this respect, the MGA Report noted that:
- 1) “it may be concluded that traffic volumes passing the subject land are substantial and likely to exceed 20,000 (vehicles per day) - these high volumes lend strong support to convenience and impulse-orientated retailing adjacent to the (Bussell) highway”;
  - 2) “Shoppers visiting the supermarket may access the store on foot at the southern entrance fronting the carpark - given the proximity of the car parking area, stock purchased may be easily carried to parked vehicles or transferred from the store within a trolley”;
  - 3) “the proposed Liquorland store will provide an alternative opportunity for combined one-trolley liquor and grocery purchases in the locality, which is currently only facilitated at the Bunbury Forum” (a shopping centre on the periphery of the locality); and
  - 4) “...many households prefer to make liquor purchases in conjunction with grocery shopping...”.
- 20 The PIA provides a general analysis of the other licensed premises in the locality which comprises 3 taverns and 4 liquor stores, including a First Choice and Dan Murphy’s liquor store and Condello’s liquor store, all large format liquor stores.
- 21 To gauge the level of public support for the proposed store, the applicant commissioned two surveys, one a telephone survey of 300 residents within the locality (telephone survey) and the other an intercept survey of 207 shoppers at the Coles supermarket and K-Mart store (intercept survey). Over 55% of the respondents to the intercept survey were from south of, but outside the locality, suggesting that the Centre is frequently used by people on the edge of, or beyond the Bunbury area who do not wish to travel into the centre of Bunbury for their shopping, or who find it conveniently located with respect to their travel patterns.
- 22 The results of the surveys were analysed and are reported upon in the DAA Report.

- 23 In answer to the question whether they supported the proposed store, 40.7% of all respondents to the telephone survey indicated support for the store (Table 17 DAA Report – all tables subsequently referred to are from the DAA Report) - 47.0% do not support the store (Table 17). The outcome of the intercept survey to the same question was 53.6% of all respondents in support (Table 63), and 29.5% not in support, of the proposed store (Table 63).
- 24 Of those respondents who purchase takeaway liquor (in varying degrees of frequency in the previous 12 months), 45.8% of the respondents to the telephone survey support the store (Table 18) - 41.3% do not support the store (Table 18); and 64.8% of the respondents to the intercept survey support the store (Table 64) - 21.0% do not (Table 64).
- 25 For those who support the proposed store, convenient location was the most common reason given (38.5% in the telephone survey (Table 22) and 57.7% in the intercept survey (Table 65)). An ability to visit the proposed store when doing their grocery/other shopping at the Centre was the next most common reason given (23% of supporters of the store in the telephone survey (Table 22) and 10.8% of the supporters of the store in the intercept survey (Table 65)).
- 26 According to the applicant, the surveys demonstrate strong support for the proposed store from shoppers who currently use the Centre, particularly those from Carey Park and further south.
- 27 The main reasons given by the survey respondents for not supporting the proposed store are:
- 1) there are already sufficient takeaway liquor outlets (48% of respondents in both surveys (Tables 25 and 68));
  - 2) there is no need for the store in the Centre because of the Parks Centre tavern and bottle shop (45% and 54% in the telephone and intercept surveys respectively (Tables 25 and 68));
  - 3) the potential for increasing anti-social behaviour (23% and 33% in the telephone and intercept survey respectively (Tables 25 and 68)); and
  - 4) providing easy access to liquor will encourage young people to drink alcohol (10% and 20% in the telephone and intercept survey respectively (Tables 25 and 68)).
- 28 The survey also highlighted that the Centre has a poor reputation among some people particularly residents of South Bunbury which, according to the DAA Report, “means that fewer residents from South Bunbury are likely to use the store”.
- 29 In addressing the concerns of respondents not supporting the store, the applicant contends that the proposed store will “provide one-stop shopping convenience function for those shopping at the Centre, particularly those shopping at the associated Coles

supermarket”, and will not increase crime or anti-social activities so as to detrimentally affect the locality’s amenity.

- 30 In response to the question in the surveys about alcohol-related incidents that may be of concern to respondents, 18% and 16.4% of respondents to the telephone and intercept surveys respectively could recall such an incident (Tables 42 and 85). Whilst this figure was reduced to less than 3% in both surveys where incidents had affected the respondent or someone in their family or household (Tables 42, 43, 85 and 86), the DAA Report commented that these figures are typical, although towards the higher end of what has been encountered in other similar surveys.
- 31 The DAA Report concluded that “the surveys demonstrate strong support for the proposed Liquorland store from those shoppers who currently use the Centre and particularly those from Carey Park, the suburb in which the proposed Liquorland South Bunbury is intended to be sited and to a lesser extent from the South and Further South regions”.
- 32 It was submitted that the surveys undertaken are valid and can be regarded as “gold standard” and that the public interest is best determined from the public itself.
- 33 Importantly and significantly, the applicant engaged Bodhi Alliance Pty Ltd (Bodhi) to canvas and assess the views of representatives of key community stakeholders, service providers and sensitive premises in the locality and their attitudes to the proposed store.
- 34 It is stated in the Bodhi Report, which details the outcome of the consultations, that the intent of the applicant is to establish a convenience style packaged liquor outlet to service the needs of the local residents shopping at the Coles supermarket. The outcomes of the consultations, as reflected in the PIA, are:
  - 1) alcohol consumption levels within the broader community in the locality are no different to elsewhere;
  - 2) the perception of alcohol abuse is more prevalent where there is social disadvantage and unemployment (particularly in the age group 30-60 years);
  - 3) none of the businesses or operations of the sensitive use stakeholders would be impacted due to the proximity of the proposed store;
  - 4) although there is some evidence of street drinking, anti-social behaviour is thought to occur more in the city of Bunbury, and anti-social behaviour did not occur at the Parks Centre tavern;
  - 5) although the Youth Advisory Council is concerned about the prevalence of underage liquor consumption this issue was not raised by other stakeholders;
  - 6) alcohol theft was identified by a number of stakeholders, but it was thought to be more prevalent where access is not restricted or controlled;

- 7) whilst the majority of respondents did not personally see a need for the proposed store, they supported the grant of the application and “mostly agreed that the store would provide greater convenience for Coles shoppers and would be of particular advantage to people with time constraints, parents of very young children and for the older persons or the less mobile who may require assistance for shopping”;
  - 8) those who opposed the proposed store are highly concerned about increased accessibility and normalisation of alcohol;
  - 9) it is generally considered that the problems in the locality are due to unemployment and social disadvantage and many initiatives have been highly successful in addressing youth disadvantage and alcohol related problems;
  - 10) the majority of sensitive premises and other stakeholders interviewed were not opposed to the grant of the liquor licence because it would not impact the community or their agency’s operations due to the location of the store within the Centre and the current availability of alcohol.
- 35 According to the Liquorland State Manager, Liquorland’s customers are generally convenience shoppers who purchase alcohol as part of their weekly grocery shop and who know what they are after and spend little time browsing.
- 36 Liquorland does not expect the store to lead to an increase in the sale and consumption of liquor in the South Bunbury area as its experience when a new licence is granted is that other outlets generally experience a decrease in sales.
- 37 In summary it was submitted that the proposed Liquorland South Bunbury store will cater for the packaged liquor requirements of consumers in the locality in an appropriate and responsible manner.

### **Submissions of the Commissioner of Police (“the Police”)**

- 38 It was submitted that after reviewing the applicant’s submissions the Police has concerns regarding the impact of the proposed premises on the community on the grounds:
- a. if the particular application was granted, public disorder or disturbance would likely result – s 69(6)(c)(ii) of the Act; and
  - b. any other matter relevant to the public interest – s69(6)(c)(iv) of the Act.
- 39 The Police questioned the accuracy of the surveys as a representation of a cross section of people living in the locality in light of the fact:
- 1) out of a population of approximately 23,000, 507 persons only were surveyed;

- 2) 72% of those surveyed were over 45 years of age.
- 40 The Police also submit that:
- 1) the unemployed rate in the surrounding area is one of the State's highest at 6.3%;
  - 2) there is a high level of State housing occupied by unemployed, non-retiree residents who are known to inhabit the surrounding suburbs;
  - 3) the level of indigenous population in the locality is understated by the applicant;
  - 4) in the applicant's PIA there are concerns mentioned by the local health and social workers regarding the high levels of domestic violence, poor parenting skills and poor nutrition within the existing indigenous community;
  - 5) there is genuine concern regarding the layout of the store with the location of the service counter and the access by two doors not allowing the staff to monitor patrons;
  - 6) it is open to the Commission to find that the level of consumer requirement is insufficient to discharge the onus on the applicant under the Act as the majority of the surveyed respondents do not see a need for the store.
- 41 Three research publications have been referred to by the Police:
- 1) Real and perceived impediments to minimum pricing of alcohol in Australia: Public Opinion, the industry and the law. *International Journal of Drug Policy* (2013), Chalmers, J. et al (the Chalmers study);
  - 2) Accessibility to alcohol outlets and alcohol consumption: Findings from VicLANES (2011); Victorian Health Promotion Foundation (Vic Health), Carlton Australia (the VicLANES study); and
  - 3) Elephant in the Room: Responding to Alcohol Misuse and Domestic Violence. *Australian Domestic and Family Violence Clearinghouse*, Issues Paper 24. Braff R (2012) (the Braff study).
- 42 The Chalmers study relates to a proposal to legislate minimum prices for alcohol products and the Police have referred the Commission to the following extract (among others) from the publication:
- “Proponents of minimising pricing highlight evidence that harmful drinkers tend to seek out the cheapest forms of alcohol...and people who drink the cheapest alcohol would be more sensitive to the establishment of a floor price because they are unable to maintain consumption without increasing the cost of drinking”.*
- 43 The VicLANES study examines the relationship between outlet density and harmful alcohol consumption, and the following extract has been referred to:

*“Frequent alcohol consumption was more common in lower-income households, and also among those who were not working, and in those in professional occupations. Consumption of alcohol at levels associated with short term harm was more frequent in younger age groups, while frequent consumption of alcohol (five days a week or more) was more common in older age groups”.*

44 The Braff study examines the relationship between alcohol consumption and domestic violence and the Police provided data on the existing level of alcohol related harm and offences in the locality for the period 1 January, 2013 and 1 August, 2014.

45 The Police highlighted the seriousness of crimes involving family and domestic violence commenting that the statistics show a significant level of domestic violence, albeit below the State average, and the actual number occurring in the community is, in the opinion of the Police, much higher and any increase would be unacceptable.

46 In support of the proposition that alcohol is one of the triggers for domestic violence and to illustrate the relationship between alcohol consumption and domestic violence, the Police refer to an analysis in the Braff study and extracted the following findings (partly quoted here):

*“Evidence suggests that an abuser’s frequency of intoxication, binge drinking or problem drinking is more closely associated with severity of domestic violence and possibility for injury of a victim, than drinking per se....Studies further show that those consuming alcohol are less aware of physical force they are using; increase their risk taking and are less concerned about consequences; and display increased emotionality, leading to a greater likelihood of violence...A number of studies have examined the effect of retail outlets selling alcohol, indicating that increased density leads to increased consumption and finding a positive correlation with violence and crime”.*

47 In summary, the Police has concerns about this application and submits that:

1. the weight to be given to any positive public interest factors within the application is limited;
2. there are six existing licensed premises that sell packaged liquor within the locality of the proposed store and a further licence will amount to a proliferation of stores, contrary to the public interest; and
3. there is existing alcohol-related harm in the community and the increased risk of such harm would be elevated with the opening of an additional liquor outlet.

### **Submissions from licensee objectors**

48 The grounds of objection of the licensee objectors are:

1. the grant of the application would not be in the public interest – s 74(1)(a) of the

Act;

2. the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor – s 74(1)(b) of the Act;
3. if the application were granted undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to and from an existing or proposed place of public worship, hospital or school, would likely to occur – s 74(1)(g)(i) of the Act;
4. if the application were granted the amenity, quiet or good order of the locality in which the premises are, or are to be, situated would in some other manner be lessened – s 74(1)(g)(ii) of the Act;
5. the grant of the application would otherwise be contrary to the Act – s74(1)(j).

49 In relation to ground 1 it was submitted that:

- i. contrary to the applicant's statement in the PIA that the proposed store will carry Liquorland's usual comprehensive range of packaged liquor, the store is small in area and the range of liquor will be limited and will focus on the cheap brands that Liquorland is known for, to suit the social dynamics of the locality;
- ii. the population growth in the locality was very low;
- iii. there is substantial opposition to the application as evidenced by the number of respondents to the telephone survey who do not support the store (47% of respondents) even if those respondents purchase packaged liquor (41.3% of respondents); (Tables 17 and 18)
- iv. the proposed liquor store will offer no new service and bring no additional material convenience as there are a large number of quality packaged liquor outlets already operating in the locality.

50 Ground 2 of the objection relates to the potential for an undue increase in harm and ill-health as a consequence of this application being approved and in relation to "at risk" groups it was submitted:

- i. that Carey Park and Withers have a high concentration of indigenous population (5.1% and 5.8% respectively) and a high level of unemployment (8.2% and 9.6% respectively);
- ii. the SEIFA Index for Carey Park and Withers reflects a relatively high level of disadvantage compared with other areas.

51 With regard to undue offence, annoyance, disturbance or inconvenience (Ground 3) it was submitted that the PIA provides the following stakeholder comments referred to in the Bodhi Report:

- i. there was some evidence of street drinking in the locality;
- ii. there is a concern about the prevalence of underage consumption of alcohol in

- the locality;
  - iii. the theft of alcohol from stores in the locality was a problem; and
  - iv. the majority of stakeholders do not see a need for the proposed store.
- 52 It was submitted in relation to ground 4 of the objection that the close proximity of parklands to the proposed store raised concerns that young persons (an identified “at risk” group) attending sporting activities and attending events might be impacted.
- 53 No comments were provided in relation to ground 5.

### **Submissions by residential objectors**

- 54 All the residential objectors raised concerns about the addition of another liquor store in the locality with some having direct experience of anti-social behaviour in the vicinity of the proposed store.
- 55 One of the objectors, a Hospital Coordinator at the Bunbury General Hospital who lives in Carey Park, has witnessed “first-hand the impact alcohol has on the immediate community around the parklands area”, including the abusive and anti-social behaviour of people affected by alcohol who require treatment. She also recounts her son’s recent experience of being approached in one of the parklands in close proximity to the proposed store by three intoxicated men, at 4.45pm, who had to be supervised away by an adult coach.
- 56 Another objector, the mother of a young family in Carey Park, reports “drunken idiots walking past late at night” and “hooning down” her street, and is concerned about the safety of her children as she believes another bottle shop in Carey Park will not only encourage more people to drink, but also cause more violence in the area.
- 57 Empty bottles and cans littering the area has also been expressed by some residential objectors as a concern both generally, and specifically as presenting a danger to children and adults utilising the park areas.
- 58 Another residential objector who has lived in the area all his life submits that Carey Park is already known for its drug and alcohol related violence and has a reputation, among some at least, as “Scary Park”. The Hospital Coordinator, referred to above (paragraph 55), also reports that the Centre has a bad reputation as a place to shop within Bunbury.
- 59 In general, the residential objectors believe that there are already sufficient liquor outlets in the locality and that the addition of another store in the proposed location will add to existing problems in the area.

## **Applicant's responsive submissions**

- 60 The applicant refutes the Police assertion (paragraph 39) that the surveys are not representative of the population of the locality, and submits that the survey design and statistical analysis was undertaken by an experienced and qualified expert and is a valid method of making inferences about the entire population of the locality.
- 61 The fact that 62% (not 72% as submitted by the Police) of the survey respondents are aged 45 years or over is likely to result in a conservative estimate of those in support of the application as there is stronger support by younger people (under 45).
- 62 The Police assertion that there is a high level of public housing occupied by unemployed non-retiree residents in the locality is not substantiated by any objective evidence.
- 63 The applicant acknowledges the slightly higher than State average indigenous population in the locality, but points to South Bunbury as the suburb with the highest population in the locality (35.5%) with "an indigenous population of only 1.4%" and that no local community providers servicing "at-risk" groups (or the Executive Director of Public Health) has lodged an objection or intervention.
- 64 The applicant disputes the relevance of the Chalmers study on the impact of minimum pricing to an application for a licence in Western Australia and reiterates that individual Liquorland stores do not "price beat", "price match" or "loss lead". In addition, it is difficult to see, according to the applicant, how the VicLANES study into alcohol use by Melbourne residents has any application to the proposed store in South Bunbury.
- 65 There is no comparative data regarding alcohol-related offences for other regional areas and the incidence of alcohol-related offences in South Bunbury, Carey Park, and Withers is low.
- 66 The applicant accepts that serious domestic violence incidents involving offences may generally be under-reported and that "alcohol consumption is one of (the many) triggers". However, without comparative data it cannot be determined if it is lesser or greater than is occurring elsewhere and given the number of incidents in South Bunbury, Carey Park and Withers is below the State average it does not follow that any increase in the level of domestic violence would be unacceptable in determining the public interest.
- 67 The applicant also accepts that alcohol is not an ordinary good, in the sense that its sale, supply and consumption is regulated by the Act, but "the inherent propensity of liquor stores to have a negative effect on the community is not a sufficient reason, of itself, to refuse the application".
- 68 The applicant contends that the Braff study and the Chalmers study have no predictive value as to the impact of an additional liquor store in the locality as:

- 1) it is not clear how the studies and reviews evaluated and referred to in the Braff study might relate to Australian conditions (the applicant cites an example of a review (Popora et al (2009)) which reviews 59 studies, one of which is from Australia); and
  - 2) the Chalmers study on the relationship between the number of liquor outlets within a locality and the harmful consumption of alcohol is misleading as the area of the locality used in the study is different from that applicable in the present application (and if adjusted to account for the difference, the study did not detect any effect).
- 69 The applicant questions the independence of some of the residential objectors (due to a connection to the licensee objectors) and points out that the Hospital Coordinator has lodged her objection in a personal capacity not as a representative of the hospital.
- 70 In relation to the residential objectors' observations of "drunken idiots walking past late at night" and "hooning down" the street, the applicant submits this behaviour is "likely to relate to existing on-premise consumption" and would not have any causal link to the proposed store.
- 71 Similarly, the problem of littering experienced by the residential objectors is said by the applicant to have no nexus with the proposed store and anti-social behaviour in the parks and sporting fields, if not occurring in the immediate vicinity of the store would be beyond the control of the applicant.
- 72 There is no evidence to substantiate the claim by the objectors or the Police that increased crime, violence and anti-social behaviour is due to the greater accessibility and availability of alcohol.
- 73 The applicant accepts that the concerns of the residential objectors are genuinely held, but submits they are not substantiated by any relevant reliable and logically probative evidence and, hence, have not been established to the requisite extent under the Act.
- 74 In response to the licensee objectors' submissions, the applicant submits:
- 1) the range and pricing of alcohol products is standard across all Liquorland stores and is not varied to meet local socio-economic conditions;
  - 2) although at the lower end, the level of non-support by survey respondents for the proposed store is "within the range commonly observed" by DAA in other similar surveys;
  - 3) the provision of one-stop shopping convenience in conjunction with grocery shopping trips will add to the diversity of packaged liquor outlets in the locality;
  - 4) while some suburbs in the locality have a higher proportion of indigenous persons than Bunbury or the State, the locality as a whole is relatively consistent with the State and significantly lower than for Country WA;

- 5) although Carey Park and Withers have a low SEIFA decile (2 and 1 respectively) and are relatively disadvantaged compared to other suburbs, the SEIFA decile for the relevant postcode (6 nationally and 5 State-wide) is a more suitable proxy for the locality; hence the MGA Report conclusion that residents in the locality experience average levels of socio-economic advantage/disadvantage;
- 6) the fact the unemployment rate in the locality (6.3%) is higher than Country WA (4.8%) is only one variable and alone is not evidence the locality is “relatively disadvantaged”;
- 7) in relation to the independence of the applicant’s consultants, particularly Bodhi, the consultants are engaged to provide objective and expert evidence and to address the positive and negative aspects of the public interest in respect of the application;
- 8) the licensee objectors’ objections are not substantiated by any objective evidence.

75 The applicant lodged further submissions to this review reiterating many of its earlier submissions and emphasising the following:

- 1) establishing a public interest in the grant of a licence does not require proof that the majority of the public support the proposal; it is enough that the grant would be in the interests of a significant section of the public;
- 2) there is currently limited potential for one-stop shopping in the locality and the nearest packaged liquor outlet (a small drive-through facility at Parks Centre tavern) is not located in an optimal position in relation to the Coles supermarket for use in conjunction with grocery shopping – further, the Parks Centre drive-through cannot on any credible basis be regarded as a substitute for the services and facilities that would be offered by the proposed store;
- 3) the DAA Report is the only evidence, apart from limited Police evidence, of existing socio-economic issues, and the surveys demonstrate there are minimal concerns in the broader community about crime and socio-economic issues in relation to the proposed store;
- 4) the residential objectors’ objections are not representative of the views of the community generally;
- 5) the Bodhi Report is based on anecdotal evidence selected from stakeholders rather than empirical data and does not purport to be representative community evidence which, based on the surveys, did not identify crime or socio-economic problems as a major issue;
- 6) the absence of any comparative data on domestic violence does not assist the Commission in making an informed assessment about the potential for any

increase in domestic violence as a result of the grant of this application (the applicant referred to a previous decision of the Commission: *Windrush Holdings Pty Ltd v Parkview Enterprises Pty Ltd & Others* LC 04/2015 at [88]);

- 7) the concept of “one-stop shopping” is not confined to large suburban shopping centres or circumstances in which a customer must be able to purchase all their weekly necessities and desired consumable products at the one shopping centre, and, in any event, the surveys demonstrate that consumers purchase their weekly necessities at the Centre.

### **Licensee objectors’ further submissions**

- 76 The licensee objectors re-iterated their submission that based on the survey evidence more people do not support the application than support it and pointed to the high percentage of respondents who considered the proposed store would not be a good addition to the Centre.
- 77 In addition, the licensee objectors emphasise the low SEIFA Index of Carey Park and Withers and refer to the Urban Renewal Study for Withers prepared for the City of Bunbury (Withers Urban Renewal Strategy: A Village in the City: Draft, Dec 2012) as evidence of the low socio-economic standing of, and high levels of rental accommodation and mortgage stress in, these suburbs.
- 78 The proposed liquor store which is a small mainstream liquor store will not offer any service that is not already very easily available in the locality.
- 79 In contrast to the applicant’s submission that the residential objectors have no “experience or expertise”, their evidence should be given significant weight as they live in the local community.

### **Further submissions by the Police**

- 80 The Police submit that, as a general proposition, apart from a potential increase in convenience in accessing liquor and the potential for lower prices in the event competition increases between stores, the benefit to the public from an additional store in the locality is limited, and that in this case the existence of the other liquor stores in the locality is relevant when considering the extent to which consumer requirements are already catered for in the locality.
- 81 Certainly, convenience is of considerably less significance than minimising harm or ill health resulting from an increase in the amount of alcohol available in the community, the “normalisation” or “pairing” of alcohol products with grocery items, and opportunistic purchasing.
- 82 Further, while alcohol related harm as evidenced by the number of offences in the locality may be below average levels, alcohol related offences are not the exclusive

indication of harm or ill-health caused by the use of liquor (*Director of Liquor Licensing v Kordister* [2011] VSC 207, at [271]) and this is particularly so considering the evidence that alcohol related domestic violence is prevalent in the community and that the parks in the locality are used for the consumption of alcohol.

### **Submissions on behalf of Director**

- 83 It is submitted on behalf of the Director, that the decision to reject the application at first instance is supported by the evidence and is based on sound and compelling reasons.
- 84 Given a significant number of survey respondents consider the proposed store to be just as convenient as their current store, there is a significant view in the community that another store would not provide an additional benefit over and above the benefit that already exists.
- 85 In the Director's submission, the one-stop shopping needs of customers do not necessarily require that liquor be available for purchase under the same roof of a shopping centre, using the same trolley, and with the Parks Centre tavern and drive-through bottle shop only a short distance from the other stores in the Centre, insufficient evidence has been provided to demonstrate the tavern and bottle shop is not already adequate to service the needs of consumers using the Centre.
- 86 The Parks Centre tavern and bottle shop may be less convenient for consumers attending the Coles supermarket, but it may be more convenient for those shopping at K-Mart and other stores which are located closer to the tavern and bottle shop.
- 87 Further, in light of the applicant's submission that the Parks Centre tavern and bottle shop may not be in an optimal position in relation to the Coles supermarket indicates that the proposed liquor store is designed to service Coles customers only and not the one-stop shopping needs of the locality in general.
- 88 There is evidence before the Commission that there is a significant problem with alcohol related domestic violence, exacerbated by the higher concentration of rental properties and social housing in Withers and Carey Park, and that disadvantaged areas are more likely to be at an increased risk of alcohol related harm.

### **Determination**

- 89 Under section 25(2c) of the Act, when considering a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- 90 On a review under section 25 of the Act, the Commission may -

*(a) affirm, vary or quash the decision subject to the review; and*

(b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance; and

(c) give directions –

(i). as to any question of law, reviewed; or

(ii). to the Director, to which effect shall be given; and

(d) make any incidental or ancillary order.

- 91 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 material before the Director and make its own decision on the basis of those materials (*Hancock v Executive Director of Public Health*, [2008] WASC 224).
- 92 Pursuant to section 38(2) of the Act, an applicant for the grant of a licence must satisfy the licensing authority that granting the application is in the public interest.
- 93 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.
- 94 Determining whether the grant of an application is “in the public interest” requires the Commission to exercise a discretionary value judgment confined only by the subject matter and the scope and purpose of the legislation (refer *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175 and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241).
- 95 The Commission also notes the words of Tamberlin J in *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 where he said:

*“The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*

*The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.”*

- 96 Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (*Palace Securities Ltd supra*).
- 97 The primary objects of the Act are:
- (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 of liquor and related services with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.*
- 98 Section 33(1) of the Act gives the Commission an absolute discretion to grant or refuse an application on any ground or for any reason that it considers to be in the public interest. The scope of this discretion was recently considered by EM Heenan J in *Woolworths Ltd v Director of Liquor Licensing [2012] WASC 384 [32]*:
- “[Section] 33(1) is an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole. Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest to make those objects the exclusive consideration nor the sole determinants of the public interest”.*
- 99 Each application must be considered on its merits and determined on the balance of probabilities pursuant to section 16 of the Act. However, it is often the case when determining the merits of an application that tension may arise between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services. When such circumstances arise, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WACA 258*).
- 100 The applicant is seeking to open a Liquorland store immediately adjacent to the Coles supermarket at the Centre and has submitted that the application satisfies the primary and secondary objects of the Act (sections 5(1) and 5(2)) and that the grant of the application is in the public interest (section 38(2)).
- 101 The Commission notes that the key benefits to the public from the grant of the application are stated by the applicant to be:

1) “One-stop shopping” convenience

The co-location of the store with a supermarket provides a highly convenient option for local residents to buy packaged liquor in conjunction with grocery shopping trips.

2) Amenity of the Locality

The store will complement other existing and proposed uses within the Centre, and provide additional local employment opportunities. By replacing a soon to be vacated tenancy, the store will maintain the activation of the Centre.

3) Safety of the Locality

The store will have comprehensive security measures in place to minimise and deter crime and anti-social behaviour.

102 In its submissions, the applicant has submitted that the surveys and other evidence provide probative evidence that the grant of the licence will cater for the requirements of a significant portion of consumers of packaged liquor and made reference to *Hay Properties Pty Ltd v Roshel Pty Ltd* (unreported, WASC, 20 July 1998). It is noted that this case was determined under the previous provisions of the Act, and while it may provide some guidance, the question of whether a significant section of the public requires the services to be offered by the proposed store, will involve a consideration of what gives rise to such a requirement and whether the requirement is in accordance with the proper development of the liquor industry.

103 In order to demonstrate a requirement on the part of consumers of liquor for the proposed store, the applicant has conducted two surveys, the telephone survey and the intercept survey, and concluded:

*The surveys demonstrate strong support for the proposed Liquorland store from those shoppers who currently use the Parks Centre Shopping Centre and particularly those from Carey Park, the suburb in which the proposed Liquorland South Bunbury is intended to be sited, and to a slightly lesser extent from South and Further South regions. For them, the proposed store is seen as convenient in that it would allow them to readily purchase takeaway liquor while on a trip to the shopping centre. These residents, as well as a substantial number from south of the Locality including residents of towns such as Gelorup, Dalyellup, Boyanup and Capel will be likely to frequently use the proposed store for at least some of their purchases.*

104 Much has been made of the results of the surveys by both the applicant on the one hand as evidence of support for the proposed store and for “one-stop” shopping, and the Police, Director and licensee objectors on the other as evidence of community opposition to, or at least an absence of support for, the proposed store and a failure on the part of the applicant to establish an unmet requirement for liquor and liquor related services in the locality.

- 105 In previous decisions, the Commission has expressed reservations about the weight that may be applied to surveys. This has been because, among other reasons, the outcome of surveys is dependent upon the method of selection and sampling of respondents, the objectivity of the surveys and petitions, the type of questions asked, and the geographical and demographic composition and nature of the locality.
- 106 In this case, the applicant claims that the surveys are independent and objective, and that the outcomes are representative of the views of the population of the entire locality and of consumers who attend the Centre. In contrast, the licensee objectors and the Police question the objectivity and representative nature of the surveys.
- 107 The licensee objectors have not presented any evidence to suggest that DAA and Bodhi are not objective or qualified to reach their conclusions other than the fact they have been engaged by the applicant on this and previous occasions. The Commission has no reason to doubt the integrity, good conscience or objectivity of the consultants engaged by the applicants.
- 108 The survey outcomes reveal that more respondents in the telephone survey do not support the proposed store than support it. Further whilst a higher number of respondents in the intercept survey support the proposed store than not, over 55% of the intercept survey respondents live outside the locality. In this respect, it should also be noted that those actually living in the locality have more of an interest in the character and amenity of their immediate community and are more likely to be affected by the application.
- 109 Furthermore, of all the 207 respondents to the intercept survey, only 32 or 15.5% would purchase liquor at least once a week (all other respondents who purchase liquor, would purchase liquor less frequently), and only 32 or 19.8% of all respondents who purchase liquor (162 respondents in total) would purchase liquor from the proposed store (Tables 72 and 73).
- 110 The questions eliciting these responses were asked of respondents before they were asked to express a view on the main reason they would choose the proposed store for their purchases, with one of the reasons given as an option in the questionnaire being “one-stop” shopping (Table 75). The earlier responses are, in the Commission’s view, more indicative of the respondents’ intentions and should be afforded more weight than later responses.
- 111 Further, while it is apparent from the later responses that there is a high measure of support for so called “one-stop” shopping (Table 75), it is not clear which of the respondents who said they would use the store (frequent and infrequent users) gave this as a reason. Nor is it clear why convenient location is the predominant reason for supporting the proposed store (Table 65), but seems not to be the case in response to the question to give the main reason why the respondent would purchase liquor at the proposed store (Table 75).
- 112 This is an example of the type of difficulties the Commission has encountered in relying on surveys and associated statistical data.

- 113 The telephone survey outcomes are similar and in indicating support for the store, the ability to visit the store when doing the grocery or other shopping at the Centre was the reason given by only 23% (28 out of 122) of the respondents (Table 22).
- 114 Again, in the telephone survey convenient location (that is, within the locality) is the predominant reason given for supporting the proposed store and only a relatively small number (8.2% or 10 out of 122) gave as a reason: "it makes sense to have a liquor store attached to a supermarket/other shopping centres have one, why not this one?" (Table 22).
- 115 As "one-stop" shopping appears not to be the main driver of support for the proposed store, but convenient location within the locality, a consideration of the other liquor outlets in the locality is relevant to a determination of whether there is a further requirement for liquor products and services, and the nature of that requirement.
- 116 A large percentage of those who participated in the survey, currently shop at Dan Murphy's liquor store or Condello's liquor store (combined 88.9% in telephone survey and 47.6% in intercept survey (Tables 11 and 56)), mainly because of price/value for money, convenience/close to home and range of products.
- 117 In relation to liquor stores in the locality other than the Dan Murphy's store, whilst price is a consideration, the main reason respondents in both surveys purchase their liquor at a particular liquor store is because of its closeness to home or convenient location (Tables 14 and 58).
- 118 The Parks Centre Tavern bottle shop is frequented by 9.9% of the intercept survey respondents, most residing in Carey Park, and 6.7% of the telephone respondents (Tables 56 and 11 respectively).
- 119 The extensive use of Dan Murphy's and Condello's liquor stores by respondents to both surveys in preference to other outlets, particularly the BWS Bunbury Forum Shopping Centre which offers an extensive "one-stop" shopping experience and is not far from the Dan Murphy's store, may also suggest respondents are not particularly influenced by the ability to "one-stop" shop, but are more influenced by price, when acquiring their liquor requirements.
- 120 Neither the telephone nor the intercept survey asked respondents to what degree and to what extent, if any, the liquor products and services offered by other outlets in the locality are unacceptable or deficient.
- 121 As is evident from the surveys, the main reason for those supporting the proposed store is convenience, although it is evident from the telephone survey, which may be considered to be more representative of people living in the locality, that 42.2% of respondents said the proposed store would be less convenient (23.1% said it would be as convenient and 27.1% said it would be more convenient) (Table 37).

- 122 At the review hearing, counsel for the applicant referred the Commission to the case of *Liquorland (Aust) P/L v Hawkins* 16 WAR 325 at 327, where Ipp J (at 327) and Murray J (at 337) commented respectively:

*“As is made clear in Charlie Carter P/L v Streeter & Male P/L proof that a significant section of the public would find it as convenient to purchase their liquor at the proposed liquor store as they do elsewhere may in itself be sufficient to establish a reasonable requirement. It is not a necessary element of proof of “reasonable requirements” within the meaning of this phrase in 38(1) that the service to be provided by the proposed liquor store would be more convenient than the service provided at some other place.” ( Ipp J)*

*“In my opinion, the point is, as both s 38 and the authorities to which I have referred above make clear, that the relevant question of fact is whether the proposed licence should be granted in order to provide for the reasonable requirements of the public to purchase packaged liquor, and the reasonableness of the requirement subjectively found to exist may (not must) be demonstrated by finding that a significant proportion of the relevant members of the public would find it convenient to purchase their liquor at the proposed liquor store, even though they may not be presently inconvenienced and even though they may have a relatively convenient outlet presently available to them.” (Murray J)*

- 123 These comments must be treated with some caution as they were made with respect to the liquor legislation predating the current Act when the overriding test was whether the grant of a licence was necessary in order to provide for the reasonable requirements of the public in the area concerned, sometimes referred to as the “needs” test.

- 124 The Commission also noted the following comments of Murray J (at 335):

*What will need to borne firmly in mind is simply that the reasonable requirements of the relevant section of the public will be established by reference to the degree of convenience with which their needs may be met, having regard to the various factors and circumstances relevant to the particular case. That will always be a value judgment and the obligation to make it has been reposed in a specialist tribunal established by the Act. It goes without saying that the making of the judgment will depend upon the facts of the particular cases as they are found to be on the evidence presented.*

- 125 Convenience is just one factor to be considered when considering the requirement of consumers for liquor - under the current Act it must be considered having regard to the proper development of the liquor industry, the other objects of the Act and, of course, the public interest.

- 126 It is accepted in the community, as evidenced by the many and varied shopping centres and precincts, that there may be some level of inconvenience experienced in purchasing liquor.

- 127 Liquor is a product that may have negative consequences in the community and is subject to extensive regulation as to its sale, supply and consumption. These controls and restrictions exist for the benefit of the community and whilst some members of the community may express a desire for more convenience, the Commission is entrusted with the responsibility of making a determination on whether the public interest is served by any proposal to widen or extend the level of convenience currently enjoyed by the public by the extension or granting of certain licences.
- 128 Many shopping centres and precincts, for example, have independent liquor stores quite removed from the local supermarket, and, for that matter, removed from the bakery, post office, bank, butcher or other retail outlets or public utilities regularly frequented as part of a person's or family's weekly or regular shopping expedition. Some liquor stores are even located in relatively isolated areas separate from a shopping centre or precinct.
- 129 A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission's view, in accordance with the provisions and intent of the Act.
- 130 Even in this case, it can be inferred from the number of survey respondents who do not support the proposed liquor store that there is a significant view within the community that the additional convenience the proposed store would provide is not expected, is not required, and is not supported. As also pointed out, the support for a liquor store attached to a supermarket among those supportive of the proposal to introduce the store is very limited indeed.
- 131 There is limited evidence of any substance that the local community in this case expect to be able to purchase their liquor products in one trolley in the immediate vicinity of a supermarket.
- 132 Proper development must be considered within the scope and terms of the Act. In this regard, it is relevant to refer to comments by Heenan J in *Woolworths Limited v Director of Liquor Licensing* [2012] WASC 384 at [52] and [54]:

*"Whether any particular application will or will not contribute to the proper development of the industry or whether it will facilitate the use and development of premises in a manner which reflects the diversity of the requirements of consumers in this state are questions of fact, degree and value judgement."*

*"Because the appellant has emphasised the potential significance of the primary objects of the Act set out in 5(1)(c) it is necessary to observe that another primary object specified in 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with a measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect diversity of the requirements in this State."* (emphasis added)

- 133 A measured approach requires a careful consideration of the broader public interest and simply because a service is as convenient, or more convenient than that currently available does not, of itself, satisfy the primary and secondary objects or the public interest as specified in the Act.
- 134 Proper development of the liquor industry is not synonymous with the unrestricted expansion of liquor outlets to satisfy a desire on the part of some consumers of liquor or liquor related services for a relatively insignificant or inconsequential modification or improvement to the level of convenience. The long term interests of liquor industry are best served by a controlled development of the industry having regard to public perceptions of the industry and the overall health and well being of the community.
- 135 At the review hearing, counsel for the applicant suggested that shoppers at the Centre should have the same degree of convenience as those who frequent Bunbury Forum.
- 136 This proposition is reflected, to an extent, in one of the formulated responses to the question in the telephone survey asking why a respondent supports the proposed store, specifically the response: "it makes sense to have a liquor store attached to a supermarket/other shopping centres have one, why not this one?" (Table 24). Tellingly, only 8.2% of respondents gave this as a reason.
- 137 In this respect, some of the other responses in the telephone survey are worth repeating to highlight the marginal benefit or requirement for either "one-stop shopping" or the additional store (taken from various tables in the DAA Report):
- 1) of the 300 respondents, only 62 purchase takeaway liquor once a week or more frequently, with 116 respondents purchasing liquor less than once a fortnight (Table 9);
  - 2) 56.9% buy their liquor from the Dan Murphy's store and 32% from Condello's liquor store (Table 11);
  - 3) 47.0% of respondents (141 out of 300) do not support the proposed store (Table 17);
  - 4) 44.7% (63 out of 141) gave as their reason for not supporting the store: no need to have another liquor outlet at Parks Centre/there is already a drive through/Tavern at the Centre/it will be bad for the drive through/Tavern (Table 26);
  - 5) 22.7% (32 out of 141) gave as their reason for not supporting the proposed store: it will increase/cause anti-social behaviour/offence/annoyance/disturbance/inconvenience/put the safety, health or welfare of the public at risk/drink driving (Table 26); and

- 6) of all 300 respondents, 13 or 4.3% said they would purchase liquor from the proposed store at least once a week, with 21 or 7.0% of respondents answering about twice or 3 times a month (Table 29).
- 138 The applicant has submitted that one of the benefits of granting the application will be the provision of a wider range of liquor products for people shopping at the Centre by pointing to the 1300 or so product lines of the proposed liquor store and the relatively limited number of product lines on sale at the Parks Centre tavern and bottle shop.
- 139 However, as was submitted by the licensee objectors at the review hearing, the proposed store could not physically display all 1300 product lines and the Parks Centre tavern and bottle shop would be expected to stock a range of products having regard to its clientele and to meet the requirements of those purchasing liquor whilst shopping at the Centre.
- 140 More significantly, the respondents to both the telephone and intercept survey did not regard a wider range of products as a reason for supporting the proposed store. Of the 122 out of 300 respondents to the telephone survey who support the proposed store, two (2) gave as the reason "Range of products/stocks a particular product". Of the 111 out of 207 respondents to the intercept survey who support the proposed store, one (1) gave this as a reason for supporting the proposed store (Tables 23 and 66).
- 141 The numbers and percentages of respondents who gave "More choice of take away liquor outlets/competition" as a reason for supporting the store was higher at 15.6% (19 out of 122) for the telephone survey and 16.2% (18 out of 111) for the intercept survey (Tables 23 and 66); however, a number of respondents to both surveys, which allowed multiple responses, also gave as a reason "why not support it/free enterprise".
- 142 The strength of a desire or requirement for additional choice because there is currently inadequate choice available is not clear from these responses, but it appears to be relatively low whatever the motivation for giving more choice as a reason in support of the proposed store.
- 143 As with convenience, the provision of a wider or alternative range of liquor products, of itself, is not a strong reason, or even a reason, to introduce another liquor store into a shopping centre or precinct. Each case will depend upon its circumstances. Different liquor stores sell a variety of different liquor products. The community does not expect nor, in the Commission's view, is it in the public interest for liquor store licences to be granted in close proximity to other liquor outlets simply because someone identifies one or more product lines or different types of liquor that are not currently catered for either in a shopping centre or precinct or some other setting. The benefits that such a proposal is likely to deliver to some consumers has to be balanced against what is in the best interests of the liquor industry and the community.
- 144 The minimal support of respondents to the two surveys for a liquor store attached to a supermarket, the limited number of respondents who purchase liquor at least once per week and who would purchase liquor at the proposed store and the significant number of respondents who do not support the proposed store has satisfied the Commission

there is not a strong demand for shopping for liquor at the proposed store whilst undertaking a major, weekly or regular shop for household groceries and other products and services.

- 145 Furthermore, while it would be convenient for a segment of the population to undertake “one stop” shopping, particularly those who shop at the Coles supermarket, shoppers who frequent the Centre have the existing option to purchase their liquor at the Parks Centre drive-through bottle shop if they wish to acquire their liquor at the same time as shopping at the Centre. The ability to undertake “one-stop” shopping, if there is a significant requirement for such a service, which is not the case here, does not mean the ability to combine one-trolley liquor and grocery purchases.
- 146 Additionally, although the range of product and browsing opportunities provided by the proposed store may not be available at the Parks Centre drive-through bottle shop, these are factors that are not that important to those who expressed support for the proposed store.
- 147 Shoppers at the Centre and people living in close proximity to the Centre have not only the Parks Centre drive-through bottle shop and tavern from which to purchase their liquor requirements, but also a wide choice of other liquor stores in the locality.
- 148 As has been already stated in these reasons, the Commission is of the view that the proper development of the industry requires a measured approach to the grant of additional licences, and the grant of a licence based on the limited convenience it offers in this case, is not a sufficient requirement in the context of the Act.
- 149 Accordingly, the Commission is not persuaded that the proposed store is required to satisfy the requirements of consumers for liquor and related services having regard to the proper development of the liquor industry or that the grant of the application is in the public interest.
- 150 The Commission is also not persuaded that the proposed store will add to diversity within the liquor industry to any significant extent, if at all.
- 151 Notwithstanding this finding, the Commission has also evaluated the evidence having regard to section 38(2) and 38(4) of the Act.
- 152 In *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208, Allanson J considered the following approach to be appropriate when assessing the potential impact of the grant of a licence on the levels of alcohol-related harm and ill-health in the community:
  - 1) make findings that specifically identify the existing level of harm or ill-health in the relevant area, in this case South Bunbury or the locality;
  - 2) make findings about the likely degree of harm to result from the grant of the application;

- 3) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- 4) weigh the likely degree of harm so assessed together with any other relevant factors to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the application.

153 In the Victorian case of *Kordister Pty Ltd* supra, Bell J commenting on the harm minimisation object said at [175]:

*“The legislation is based on no narrow conception of what harm might arise from the misuse and abuse of alcohol, which is to be minimised. It encompasses harm to health and well being of individuals, families and communities, as well as social, cultural and economic harm and harm to neighbourhood amenity. It encompasses our right to personal safety and our freedom to move in the streets without hindrance, disturbance or molestation. The intention of the object is to ensure the decision-making process is fully informed by all the costs and benefits, and is not dominated by economic considerations....”*

154 Bell J in the same case went on to comment at [184] and [186]:

*“Harm minimisation as an object is aimed at everybody who might experience harm from misuse and abuse of alcohol, including those who misuse and abuse it and thereby cause harm to themselves and others, those who consume it responsibly and those who do not consume it all, as well as their families and the community generally...”*

*“By its very nature, much evidence about harm minimisation will be general and expert in nature. It may be epidemiological or sociological, to name just two of the different disciplines which may be involved. It will not necessarily be evidence relating directly to the particular premises, neighbourhood or locality concerned. It may nonetheless be relevant and admissible, for it may depending on the circumstances, assist in determining the likelihood that harm is occurring or will occur, the nature of that harm and what contribution can be made in minimising it. Such evidence may be especially important where it is connected by other evidence with the “particular local, social demographic and geographic circumstances” of the given case”.*

155 Although determined under different legislation, the references to the type and the nature of evidence of harm, is, nevertheless, a guide.

156 The applicant has submitted that the evidence of socio-economic disadvantage and “at risk” persons in the locality is mixed, pointing out that the postcode of the entire locality has a decile of 5 in the SEIFA Index and suburbs with a lower decile of 1 and 2 (Withers and Carey Park) make up only 36% of the population in the locality compared to South Bunbury with 35% of the population.

- 157 However, this seems to the Commission to overlook two important factors: the proposed liquor store is to be located in Carey Park, and according to the applicant's own evidence, the survey highlighted that the Centre has a poor reputation among some people particularly residents of South Bunbury which "means that fewer residents from South Bunbury are likely to use the store".
- 158 The Bodhi Report also seems to the Commission to provide evidence of the socio-economic character of the locality. Whilst South Bunbury is a mature suburb, the suburbs of Withers and Carey Park are undergoing urban renewal and the area is relatively economically disadvantaged with a high percentage of rented homes, lower household incomes and higher unemployment than the State median and average.
- 159 Most recently, the Withers urban renewal project is designed to, among other things, improve the area and address social issues and anti-social behaviour. According to the Withers Urban Renewal Strategy lodged by the licensee objectors, the area is reportedly more socio-economically disadvantaged than the surrounding area and Bunbury.
- 160 The Commission is satisfied that Carey Park, the suburb in which the proposed store is to be located, and Withers, one of the suburbs in close proximity, which together account for 36% of the population of the locality, experience a relative high level of socio-economic disadvantage.
- 161 The Police have reported that the incidence of alcohol-related offences in the locality is lower than the State average. However, the level of alcohol and non-alcohol related domestic violence is considerable. Further, the number of assaults, drug and damage offences are also high.
- 162 The Police are concerned that a level of crime, particularly domestic violence, in the local community goes unreported.
- 163 The Bodhi Report also contains evidence of alcohol related harm in the local community.
- 164 The key stakeholders interviewed for the purposes of the Bodhi Report work in a range of different capacities in the locality. According to the Bodhi Report, some are counsellors, medical practitioners and social workers working with people affected by alcohol related harm. Their observations, opinions and comments are not only evidence of harm of which they have direct knowledge, but also evidence of harm which is occurring in the locality and community likely to be affected by the grant of the application.
- 165 The Bodhi Report and Withers Urban Renewal Strategy provide an insight into the extent and importance to the community of crime and anti-social behaviour in this locality.
- 166 Whilst each case will depend upon its circumstances, the Commission notes the comments of Eldeman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public*

*Health* [2013] WASC 51. In response to submissions made by Liquorland at the appeal hearing that the service providers who had made submissions had, at most, expressed opinions and made assertions which were unsupported by evidence, Elderman J, commented:

*“Even apart from the lack of application of the rules of evidence to the Liquor Commission, a category of ‘admissible expert evidence...consists of a generalisation from observed facts within the personal experience of the witnesses in a field outside ordinary lay experience’. The evidence of the service providers was expert in this category.”*

- 167 The applicant submitted at the review hearing that the Bodhi Report is cast in general terms and is, therefore, of limited use. The applicant has also submitted that the report is based on anecdotal evidence from selected stakeholders rather than empirical data, and, in contrast to the DAA surveys, does not purport to be representative community evidence.
- 168 The author of the Bodhi Report interviewed a total of 59 key community stakeholders, service providers and managers of the identified sensitive premises (medical centres, aged care facilities, schools and educational institutions, child care facilities, and churches).
- 169 It is open to the Commission to infer that the information, comments and opinions expressed by the key stakeholders as recorded in that report, albeit paraphrased by the author of the report, are an accurate representation of the views expressed by the key stakeholders at the interviews conducted and would have been regarded by the interviewer and author of the report as supported by first hand experience in their respective disciplines and in the areas about which they were commenting.
- 170 In the Commission’s view, the value of the evidence in the Bodhi Report lies in the fact it represents the views of qualified professionals and experienced persons working in the locality who are confronted with, and most aware of, the impacts of social disadvantage, alcohol and drug abuse and anti-social behaviour. As the report states: the consultation process sought to gain an understanding of “current community perceptions of alcohol related problems in the area, patterns of alcohol consumption, factors contributing to alcohol abuse, and community impacts”.
- 171 The Bodhi Report could have been more informative by identifying who expressed the various views detailed in the report, but it appears the report was framed to protect the privacy of the participants. The views expressed and recorded are no less revealing and important. The author of the report is herself a professional and expert in her field. She utilised a well recognised Drug and Alcohol Office Mapping Tool to assess alcohol related problems in the community and would, presumably, be expected to accurately record and represent the views, experiences and opinions expressed to her during her interviews with the various stakeholders.
- 172 There are three key drug and alcohol treatment service providers within the locality (South West Aboriginal Health Service, Alcoholic Anonymous and the South West

Community Drug Service) some of whom employ or otherwise engage with counsellors, social workers and other family support service providers.

- 173 The sensitive premise stakeholders interviewed appear not to be concerned about the proximity of their premises to the proposed store. As an example, the GP service closest to the proposed store (800 metres away), which undertakes drug and alcohol testing and offers psychologists who provide drug and alcohol counselling, considered that the proposed store would not impact them or their clients as it is not visible or directly accessible from the practice and there are existing liquor outlets in closer proximity. This is no doubt due to the fact the Centre and proposed store are surrounded by various sporting and other parks. It should be noted these parks and grounds are widely used for a range of community sporting activities.
- 174 In addition to the sensitive premise stakeholders, businesses and key stakeholders working with the community were consulted and interviewed.
- 175 Some of the more significant outcomes of this process in the context of this application were (taken from the Bodhi Report):
- 1) *While stakeholders thought the majority of people were consuming alcohol at a level no different to elsewhere, all were aware of situations where consumption of alcohol was at levels considered unacceptable. Most commented that the problem of alcohol abuse was more prevalent where there was social disadvantage and unemployment. In these groups, alcohol was being consumed mainly in the home and sometimes in public spaces. The most identified group was unemployed or disadvantaged adults aged 30-60 years.*
  - 2) *It was noted that there is a significant problem with alcohol-related domestic violence and that this was a larger problem in areas where there was a higher concentration of rental properties especially social housing in Withers and, to some extent, Carey Park.*
  - 3) *Although most interviewed who do not work directly with the community were unaware of anti-social alcohol related behaviour, those working in health and education were aware of problems associated with alcohol and were particularly concerned about the impacts on children resulting from domestic violence, poor parenting and poor nutrition. The risks to aboriginal people were especially noted.*
  - 4) *Shoplifting, theft, property damage and break-ins by people looking for alcohol were identified as a problem, and in-store security and the culture of alcohol consumption were seen as significant issues. In this respect, it was noted that the co-location of a liquor store with a supermarket within a shopping centre has security advantages.*
  - 5) *Improving security at liquor outlets, community education in schools and the broader community, and raising the price of a standard drink to make it less affordable, modifying advertising and even tracking consumption levels of*

*consumers were some of the suggestions put forward to improve the harm caused from alcohol consumption at unacceptable levels.*

- 6) *The Youth Advisory Council would like to see less alcohol available and some of those interviewed thought that there were enough existing outlets in Bunbury and that associations of liquor with supermarkets were not a good idea as it led to normalisation of alcohol.*

176 The final section of the Bodhi Report asks if the proposed store will impact the community and is worthy of setting out in detail:

- 1) *Although the majority of respondents personally did not see a need for the particular store due to the current need being met by the existing drive-through bottle shop, they supported the granting of the licence for the proposed store. They mostly agree that it would provide greater convenience for Coles shoppers and would be of particular advantage to people with time constraints, parents of very young children who would like to limit the extent of their shopping trip and for older persons or the less mobile who may be requiring assistance for shopping. It was also considered by the majority that it would not adversely impact the community due to existing availability and the community was generally not at risk.*
- 2) *Those who were opposed to the store were highly concerned about increased availability and normalisation of alcohol. The Youth Advisory Council was highly opposed and was concerned that more stores would make alcohol easier to obtain by underage drinkers. They were very keen to see increased security CCTV, and limited store entry and exit. Those opposed were concerned that greater availability and visibility would impact those “at risk” groups and that they would be more likely to spend food money on alcohol.*

177 There are numerous references in the Withers Urban Renewal Strategy to the socio-economic characteristics of the area and the community concern about crime, safety and anti-social behaviour. Indeed, the first recommended strategy is to reduce crime and anti-social behaviour.

178 Much of the evidence submitted by the residential objectors corroborates the views of the key stakeholders working in the community recorded in the Bodhi Report, and whilst none of the individual residential objections may be established to the requisite degree under the Act, the cumulative effect of their evidence, along with the evidence from the key stakeholders is relevant to a consideration of whether the applicant has satisfied its ultimate onus of showing that the application is in the public interest (*Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51 Eldeman J at [30]).

179 The applicant has sought to diminish the significance of concern expressed by respondents:

- 1) about the prospect of an increase in anti-social behaviour and adverse affect on the amenity of the locality (22.7% and 32.8% of those surveyed in the telephone and intercept survey respectively gave this as a reason for not supporting the proposed store, Tables 25 and 69); and
  - 2) who are aware of incidents in the vicinity of the proposed store attributable to misuse of alcohol which would cause them concern in relation to the opening of the proposed store (18.3% and 16.4% of those surveyed in the telephone and intercept survey respectively responded to this question, Tables 42 and 85).
- 180 However, these results are not insignificant and are consistent with the views expressed by residential objectors and those key stakeholders working in health and education in the locality, as well as the comments and strategies in the Withers Urban Renewal Strategy.
- 181 In summary, although it appears from the Police evidence that the official recorded rates of alcohol-related crime in the locality are below the State average, there is, in the view of the Commission, important and significant evidence from persons who are exposed to the consequences of alcohol-related harm that there is a concerning level of alcohol-related harm in the locality.
- 182 The Police have referred the Commission to a number of research papers to assist the Commission in determining whether the grant of the application is likely to result in an increase in alcohol-related harm in the community: the Chalmers Study, the VicLANES Study and the Braff Study.
- 183 The Chalmers Study considered the introduction of Australian national legislation requiring a minimum price be placed on alcohol products and the Police have highlighted from that report the practice of some supermarkets and retailers selling and promoting, through loyalty schemes, low priced liquor, sometimes below the cost price because of their ability to utilise “loss-leading” practices.
- 184 The Police also referred to the following extract from the report:
- Proponents of minimum pricing highlight evidence that harmful drinkers tend to seek out the cheapest forms of alcohol....and people who drink the cheapest alcohol would be more sensitive to the establishment of a floor price because they are unable to maintain consumption without increasing the cost of drinking.*
- 185 This highlights a correlation between the price of liquor and levels of consumption by persons in the community drinking alcohol at a harmful level.
- 186 The applicant has submitted that the evidence on the relationship between price, alcohol consumption and resulting harm is invariably statistical in nature and generally problematic. That may well be the case, but in the Commission’s view, research in this area is invariably general in nature and does not have to be unqualified to be of assistance.

187 In relation to “at risk” groups in the locality, the evidence of the Police and licensee objectors, but more particularly the evidence from the various key stakeholders as represented in the Bodhi Report presented information specific to the locality regarding the prevalence of alcohol abuse where there is:

- 1) social disadvantage and unemployment;
- 2) a significant problem with alcohol-related domestic violence which is a larger problem in areas where there is a higher concentration of rental properties especially social housing in Withers and, to some extent, Carey Park ; and
- 3) a concern that greater availability and visibility of alcohol will impact those “at risk” groups who will be more likely to spend food money on alcohol.

188 There is further evidence that crime, safety and antisocial behaviour is a problem in Withers, so much so that the Withers Urban Renewal Strategy identifies the reduction of crime and anti-social behaviour as one of its main objectives.

189 In the Commission’s view there is clear evidence of socioeconomic disadvantage in the locality, in suburbs in close proximity to the proposed store, and a real concern among those working within the community as service providers and health professionals and at a community level on such projects as the urban renewal project for Withers about alcohol-related harm and the prevalence of crime and antisocial behaviour.

190 While the evidence of the Police suggests that the level of alcohol-related crime in the locality is below the State average, some crime, particularly alcohol-related domestic violence is most likely going unreported.

191 This low level of recorded crime also has to be viewed in the context of the other evidence from key stakeholders about the level of alcohol-related harm occurring in the community.

192 In *Executive Director of Public Health v Lily Creek International Pty Ltd* [2001] WASCA 410 at [59] Wheeler J commented:

*“The Act directs attention to the minimisation of alcohol related harm generally (s5(1)(b)). The relevant question for the Court, in that case, is the level of alcohol related harm, due to the use of liquor, which is likely to result from the grant of the application. 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 which appears to be commonly accepted in the community the distinction is probably not significant. However where there is already a very high and*

*serious level of alcohol related harm in a community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words it is not the “risk” of harm in some abstract sense which is relevant but rather the risk having regard to the proven circumstances of the particular area in relation to which the application is made. It appears that the learned judge approached his task without considering the relevance of the existing levels of alcohol-related harms.”*

- 193 In this case, there is clearly considerable concern at a community level about the existing prevalence of crime and anti-social behaviour, and the ready availability of alcohol and culture of alcohol consumption in the locality.
- 194 The Commission, of course, cannot accurately predict the likely impact on alcohol-related harm and ill-health that may result from the grant of the licence, and must evaluate all the evidence before it.
- 195 The applicant acknowledges the higher level of unemployment and the slightly higher indigenous population in the locality (relative to the State average) and points to the fact that the suburb of South Bunbury with 35% of the population in the locality has a low indigenous population (of 1.4%). However, this fails to recognise the impact of the proposed store in the suburbs of Carey Park and Withers with indigenous populations of 8.2% and 9.6% respectively and total populations relative to the population of the locality of 21.9% and 13.5% respectively. It also appears to be at odds with the applicant’s own evidence that South Bunbury residents are less likely to utilise the store.
- 196 The applicant also highlights the fact that none of the local community providers servicing “at-risk” groups or the Executive Director of Public Health (EDPH)) have lodged an objection or intervention.
- 197 The failure of the EDPH to lodge an intervention does not imply that the EDPH does not have concerns about the potential impact of this application. The Commission would have welcomed input from the EDPH, but there may be various reasons why an intervention has not been lodged.
- 198 In response to the concerns expressed by residential objectors about antisocial behaviour, the applicant submits this behaviour is “likely to relate to existing on-premise consumption” (there does not appear to be any evidence supporting this contention) and would not have any causal link to the proposed store.
- 199 Similarly, in response to the problem of littering experienced by the residential objectors, and the anti-social behaviour in the parks and sporting fields, the applicant submits it has no nexus with the proposed store and if not occurring in the immediate vicinity of the store would be beyond the control of the applicant.
- 200 This highlights the fact that most of the problems associated with irresponsible and harmful consumption of alcohol purchased at liquor stores occurs away from the premises. The problems are no less serious for the community.

- 201 In a previous decision, the Commission held that: “it is the consequences of the granting of the licence in a particular location rather than the proposed operation of the premises themselves that should be the determining factor in assessing the likelihood of the amenity of the area being diminished” (*Riley Enterprises (WA) Pty Ltd* LC 38/2014).
- 202 The Commission respects the views of the key stakeholders as represented in the Bodhi Report and acknowledges that the grant of the application would provide added convenience to Coles supermarket shoppers and benefit some parents, for example with young children and older less mobile people, although there is limited or no evidence of any or any sizeable number of people with limited mobility. However, as indicated above, this added convenience is marginal and when considered in the context of the Act and the proper development of the liquor industry, does not, of itself, support the grant of the application.
- 203 The fact a “majority of sensitive premises and other stakeholders” are not opposed to the proposed store appears at odds with the serious concerns and views expressed in the Bodhi Report about the affect of alcohol consumption on the community and “at risk” groups in the community. It is not apparent which of the stakeholders supported the granting of the licence and whether it includes those working in the health and education fields in the community. It is apparent that those who are opposed to the store are “highly concerned” about the increased availability and normalisation of alcohol and that the greater availability and visibility of alcohol would impact those “at risk” groups who would be more likely to spend food money on alcohol. The Youth Advisory Council is also “highly opposed” to the proposed store.
- 204 The Commission is not persuaded by the statement of the Operations Manager of Liquorland that the proposed store, if approved, would not result in an overall increase in the sale and consumption of alcohol in the locality. Such a conclusion, in the Commission’s view, would require an analysis and consideration of a multitude of factors, including a comparison of the demographic nature of the locality and other localities in which new stores had been introduced, the number of liquor stores and other liquor outlets in those localities and the buying habits of the consumers of liquor in the various localities, to name but a few.
- 205 The research and studies that have been referred to, in fact raise the likelihood of an increase in the levels of alcohol consumption in the locality and in the suburbs in close proximity to the proposed store if the application is granted.
- 206 In the Commission’s view, this risk of an increase in the overall level of consumption of alcohol in a locality where there is a high level of social disadvantage and antisocial behaviour and where there is evidence of a serious level of domestic violence, is not insignificant.
- 207 Further, although the outcomes of the research and studies into a correlation between alcohol-related harm and socioeconomic status, outlet density, alcohol pricing, and increased availability of liquor are mixed, the possibility of an increase in harm and/or

anti-social behaviour affecting particularly those “at risk” members of the community in the suburbs of Withers and Carey Park could not be ruled out.

208 The applicant has made reference to the absence of comparative data from the Police. It is the case that comparative data from other localities and regions is of assistance to the Commission in determining likely trends in the level of harm. However, in this case, the Commission must have regard to the clear concerns of the community about the current level of alcohol-related harm that is evident in the locality, in particular in the suburbs of Carey Park and Withers, and assess whether any likely increase in harm or deterioration in amenity would be acceptable to the community. In the Commission’s view any increase of any significance would be unacceptable and detrimental to the community living in the locality.

209 In weighing the risk of:

- 1) an increase in alcohol-related harm in the locality, particularly harm to “at risk” groups, such as the unemployed, members of the indigenous community, victims of domestic violence and occupants of social housing;
- 2) an adverse affect to the amenity of the locality; and
- 3) an increase in the level of offence, annoyance, disturbance or inconvenience to those in the vicinity of the propose store,

against the purported benefits to be derived from the introduction of the proposed store, the Commission is firmly of the view the interests of the local community and the public interest generally are not served by granting the application and the application is accordingly refused.



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**EDDIE WATLING**  
**PRESIDING MEMBER**