

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Windrush Holdings Pty Ltd
(represented by Ms Jessica Patterson of Lavan Legal)
- Respondent:** Parkview Enterprises Pty Ltd & KMH Corporation Pty Ltd
(both represented by Mr Mario Sequeira of Hospitality Total Services Pty Ltd)
- Objectors:** Narelle E Gastevich
Carol Tucker
Edna McQueen
Lois and Harry Lewis
Lorna Wilson
Brenda Anthony
Jean Ralph
Norma Jean and Malcolm Willsher
Margaret Alban
Shirley Nesbit
John and Eve Berichon
Richard Croome
Reginald & Beverley C Lincoln
- Intervener and Objector:** Commissioner of Police
- Commission:** Mr Eddie Watling (Acting Chairperson)
Ms Helen Cogan (Member)
Mr Michael Egan (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* for review of the decision of the delegate of the Director of Liquor Licensing to approve an application for the conditional grant of a liquor store licence

for premises to be known as Cellarbrations
Duncraig.

Premises: Cellarbrations Duncraig
Shop 6, 8 Burragah Way
Duncraig

Date of Determination: 10 February 2015
(on papers)

Determination: The application is refused and the decision of
the Director of Liquor Licensing to approve
the liquor licence is affirmed.

Authorities referred to in Determination:

- *Independent Liquor Merchants Pty Ltd v Commissioner of Police & ors* LC 35/2014)
- *Busswater Pty Ltd v Director of Liquor Licensing* (LC 17/2010) P36
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *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 [32]
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WACA 258)
- *Woolworths Ltd v Director of Liquor Licensing* (2013) WASCA 227

Background

- 1 This is an application pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”) for a review of a decision of the delegate of the Director of Liquor Licensing (“Director”) to grant a licence to Parkview Enterprises Pty Ltd and KMH Corporation Pty Ltd to operate a liquor store at Duncraig Village Shopping Centre, 8 Burregah Way, Duncraig, WA under the trading name Cellarbrations Duncraig (“licensee”).
- 2 The application for review has been lodged by Windrush Holdings Pty Ltd, itself a holder of a liquor store licence for Marmion Village Cellars situated within the defined locality of the proposed liquor store (“applicant”).
- 3 On 17 January 2014, the licensee lodged its application for the liquor store, complied with all statutory requirements and lodged the necessary and required documentation, including a Public Interest Assessment (“PIA”).
- 4 Notices of objection to the licence application were received from the applicant and a number of nearby residents (“residential objectors”) and a notice of intervention and objection was lodged by the Commissioner of Police (“the Police”).
- 5 On 25 September 2014, the Director determined the application on the papers and published his decision (A224282) to approve the application.
- 6 On 28 October 2014, the applicant lodged its application for review with supporting submissions lodged on 26 November 2014.
- 7 On 2 December 2014, the licensee responded to the application for review with submissions lodged.
- 8 At the request of the applicant, this matter is to be determined on the papers in accordance with section 16(2) of the Act.

Submissions on behalf of the applicant

- 9 The applicant is seeking a review of the Director’s decision on the basis:
 - 1) the grant of the licence is not in the public interest;
 - 2) the material that was before the Director does not support or justify the grant of the licence; and
 - 3) the particulars and submissions in support of the objection, including the statement pursuant to section 74(3)(a) dated 18 March 2014 have more evidential weight than the licensee’s case.

- 10 In essence, the applicant's grounds for seeking a review of the Director's decision reflect the grounds and basis upon which the applicant objected to the grant of the licence in the first instance.
- 11 Accordingly, the grounds of review and accompanying submissions will be addressed coincidentally with the applicant's submissions in support of its objection to the grant of the licence.
- 12 The applicant objected to the grant of the licence before the Director on the basis it:
 - 1) will not be in the public interest;
 - 2) will cause undue harm and ill-health;
 - 3) will lead to undue offence, annoyance, disturbance or inconvenience being likely to be caused to local people; and
 - 4) would otherwise be contrary to the Act.
- 13 In support of its objection before the Director, the applicant submitted that the evidence provided by the licensee to meet the requirements of section 5(1) of the Act and to demonstrate the grant of the licence is in the public interest was:
 - 1) small in volume,
 - 2) generic in nature,
 - 3) of limited or no probative value; and
 - 4) insufficient to show a real and demonstrable requirement for the liquor and related services proposed.
- 14 The applicant also points to a recent decision of the Commission (*Independent Liquor Merchants P/L v Commissioner of Police & ors* LC 35/2014) and submits that, as in that case, "there is no evidence of any significant benefit....nor is there any, or any significant evidence of how the proposal will contribute to the proper development of the liquor, tourism and hospitality industries".
- 15 The applicant also submitted that:
 - 1) the locality is not growing, but is well established and settled;
 - 2) the Duncraig Village Shopping Centre is small and could not be said to support an argument in favour of "one-stop" shopping; and
 - 3) it is not appropriate or a desired outcome of the Act that every shopping centre be granted a licence.

- 16 The applicant further submitted that, due to a history of anti-social behaviour in the associated car park and surrounds, together with the location of a McDonalds fast food outlet in the same shopping centre as the proposed liquor store, there is the potential to cause offence to nearby residents and “at risk” groups. Harm may be caused, particularly because of “people resorting to the car park with fast food and potentially purchasing packaged liquor to accompany their car park meal”.
- 17 The Minutes of the City of Joondalup meeting on 17 April 2012 declining an application by McDonalds to extend its drive-through trading hours to 24 hours a day, seven days a week were presented in support of this proposition.
- 18 The Minutes reveal that 15 complaints relating to noise, increased traffic, anti-social behaviour, increased litter and odour had been received by the City over the “recent years” preceding the application by McDonalds.
- 19 The concerns of some residents about anti-social behaviour extended to graffiti, vandalism, littering and hooning during the current late night hours of McDonalds’ trading (closing hours: 11pm on Sunday through to Thursday; and 1am on Saturday and Sunday).
- 20 In relation to the proper development and diversification of the liquor industry, the applicant contends: “simply adding another licence to the existing outlet density which offers nothing more than the usual or stock-standard facility available in many other places cannot be said to be a proper development”.
- 21 In the view of the applicant, the three existing liquor stores within a 2km radius of the proposed liquor store (together with two licensed clubs) are “more than capable of servicing the needs of the local community”.

Submissions on behalf of the licensee

- 22 The licensee submitted in its PIA that it has owned and operated successful licensed liquor stores such as Cellarbrations Morley, Yokine Cellars and Hillarys Cellars, and that the two entities comprising the licensee have, collectively, approximately 34 years experience as liquor store operators. They have demonstrated an understanding of the rights and responsibilities of a licensee under the Act and at the time of this application, have no known recent liquor infringements.
- 23 The Duncraig Village Shopping Centre comprises a relatively small number of mixed use commercial businesses including: a Chinese restaurant, medical centre, a gourmet grocer (currently vacant), fast food outlet, “fish and chip” shop, beautician, real estate agent and dry cleaner.
- 24 The licensee proposes to “replicate the proven and successful formula used at the above (para 22) noted liquor licensed outlets” and, with a particular focus

on local WA producers, will provide a wider range of liquor products than is currently available in the locality. The store will incorporate approximately 250m² of patron browse, storage and display areas.

- 25 An extensive list of local WA alcohol products to be stocked in the liquor store was provided with the PIA.
- 26 The licensee has pointed to its previous experience as a demonstration of its commitment to supporting smaller local WA producers and, as an independently owned and operated store, the licensee maintains that it provides a presence for those smaller local producers who otherwise do not have a presence in the larger format discount chain liquor stores in Perth.
- 27 A number of letters of support were provided with the PIA from local WA vineyards and producers known to, and supported by, the licensee over its years of operation.
- 28 The licensee also points to its knowledge of local and international, but particularly local, liquor products and its experience in catering to the specific requirements of its customers. This knowledge and experience, and commitment to stocking and promoting local products will provide a diversity of product and support the development and diversification of the liquor industry in the State.
- 29 To further support its contention that the licence application satisfies section 5(1) of the Act by catering to the requirements of consumers of liquor and related services, the licensee submitted letters of support from all the business operators at the shopping centre in which the store is to be located, 17 letters of support from the public, a petition in support of the liquor store with 141 signatures and 223 shopping centre consumer surveys. The petition was lodged by one of the small business operators in the shopping centre and has been signed by that business proprietor's customers.
- 30 The local MLA for Carine also supports the licence application on the basis that the shopping centre will be enhanced by the addition of an independent liquor store which will help keep the small shopping centre economically viable.
- 31 The consumer surveys were conducted by the licensee and, adopting a standard form, sought responses to questions about what respondents look for in a liquor store, whether they would be interested in dietary and/or low-alcohol products, if a wider range of products provided by an independently owned and operated store would be of interest and if there is support for an independent liquor store in the shopping centre.
- 32 The licensee provided the following breakdown of the responses:
 - 1) *When asked what they (respondents) looked for when choosing a liquor store, the most favoured responses were the "Location" at 84.38% and*

“Convenience” at 81.70%. Other popular responses were “Support Local Producers” and “Value for Money”, at 69.64%.

- 2) *When asked what else they (respondents) looked for when choosing a liquor store, some of the responses are as follows:*
 - a) *52.47% stated they would be interested in “purchasing dietary specific or low alcohol products;*
 - b) *92.41% of the survey respondents said that they “would be interested in purchasing local WA alcohol products that may not be available at other liquor stores in the locality”;*
 - c) *98.21% indicated they would be interested in the wider range of products available through an independently owned liquor store;*
 - d) *99.55% of the survey respondents stated that they supported a family owned and operated independent liquor store.*

- 33 A small number of responses provided additional comments supporting an independent store and greater choice of liquor products.

- 34 In the PIA, the licensee also submits that its primary consideration is to provide a “well managed and controlled premise...that causes no harm or ill-health to the surrounding locality or to patrons resorting to the premises”.

- 35 Additionally, the licensee highlighted the low level, relative to the State average, of harm and ill-health risk groups for the area comprising the locality.

- 36 In response to the submissions from the various objectors to the application for the liquor store, including the applicant, the licensee submitted:
 - 1) there is no evidence to suggest that young people will buy liquor, drink it in their cars and then drive away dangerously behaving like hoons and, in any event, the proposed harm minimisation policy will mitigate, if not prevent, this type of activity;

 - 2) aged care facilities are not typically considered to be an “at risk” group, but of the four aged care facilities nearby and in the defined locality, one was given an overview of the application and the others were provided with a notice of application and none raised any objection to the licence application;

 - 3) there is no evidence to support the contention that Police and Council will need to carry out additional security patrols to address drinking in the surrounding public areas;

- 4) the applicant's licensed liquor store (Marmion Village Cellars) is in a suburban location with residential homes nearby;
- 5) there are other fast food outlets and liquor stores that successfully co-exist across Perth with very little anti-social behaviour;
- 6) the liquor store will add employment opportunities to the local community;
- 7) no objections were received from either of the two places of worship contacted within the locality or those provided with a notice of application.

Submissions by residential objectors

- 37 The submissions from the residential objectors to the original application for a liquor store licence are generally based on the grounds that undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity would be likely to occur and that "at risk" groups are present in the area (section 74 of the Act).
- 38 No additional submissions were received in relation to this review application.

Submissions on behalf of the Commissioner of Police

- 39 The Police lodged a notice of intervention and objection pursuant to section 69(6)(c)(ii) and (iv) and section 73(1) of the Act for the purpose of making representations on the grounds that:
 - 1) *if the particular application was granted public disorder or disturbance would be likely to result, or as to any other matter relevant to the public interest;*
 - 2) *if the particular application was granted and/or conditions not imposed public disorder or disturbance would be likely to result, or as to any other matter to the public interest.*
- 40 The Police submitted that the consumer survey conducted by the licensee has not canvassed a sufficient number of the general population within the defined locality to produce the required level of objective evidence of public support for the proposed premises.
- 41 In addition, the Police questions the objectivity of the consumer surveys given there is no explanation of the methodology provided by the licensee beyond the statement: "the applicant also personally conducted over 223 consumer surveys to gauge public interest...".

- 42 The Police submitted that, based on a previous decision of the Director of Liquor Licensing (A219980 at page 3) referring to the Commission's finding in *Busswater Pty Ltd v Director of Liquor Licensing (LC 17/2010) P36*, that letters of support from business people purporting to speak on behalf of consumers simply do not go far enough to satisfy the Commission that the general public has a requirement for liquor and related services in the manner proposed by the applicant (object 5(1)(c) of the Act).
- 43 Despite the harm minimisation measures proposed by the licensee, the Police also consider that:
- 1) *the locality is already sufficiently catered for in all packaged liquor products, including dietary specific products;*
 - 2) *the risk of harm does not cease the moment the sale of liquor products is concluded and the patron leaves the liquor store; and*
 - 3) *research supports the proposition that greater outlet density leads to higher rates of violent crimes, amongst other alcohol abuses.*
- 44 In addition, the Police highlighted the absence of any specific harm minimisation strategy for the particular "at risk" groups in the locality or any proposal to become a member of the local Liquor Accord, and submits where packaged liquor facilities are located within residential settings there is an increased risk of harm or ill-health through the additional availability of liquor products. No evidence was submitted in support of this latter contention.
- 45 Reported crimes over the 12 months from January to December 2013 in the suburb of Duncraig totalled 518 with alcohol directly contributing to 25 criminal offences. There were three burglaries/attempted burglaries at the Duncraig Village Shopping Centre, all unrelated to alcohol.
- 46 Notwithstanding this low level of crime, the Police expressed the view that the incidence of alcohol-related violence will increase with the addition of a liquor store due to the nature of trade of liquor stores where "harm occurs away from the premises, most often where consumption takes place".
- 47 The Police highlighted the number of alcohol and non alcohol related domestic incidents, including assaults that occurred between January and December 2013 in Duncraig (but not any other suburbs for comparison purposes) and opined that domestic violence will increase because of the additional availability of alcohol.
- 48 Statistics relating to police attendances for anti-social behaviour in Duncraig broken down by day of the week and time of day were also submitted. The statistics are not broken down into alcohol and non alcohol related incidents; however, they do reveal a higher level of anti-social behaviour across the suburb over the weekend between 8pm and midnight.

- 49 For the same 12 month period, the number of police attendances within a 250m and 50m radius of the proposed liquor store premises was 16 and six (6) respectively. The Police acknowledge that these attendances have related to commercial matters, such as burglaries, and further comment that liquor stores will not have an overwhelming number of issues at the premises, but that offences (will) occur where liquor is consumed, often in residential settings.

Determination

- 50 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.
- 51 On a review under section 25 of the Act, the Commission may –
- a. affirm, vary or quash the decision subject to the review;
 - 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;
 - c. give directions –
 - 1. as to any question of law, reviewed; or
 - 2. to the Director, to which effect shall be given; and
 - d. make any incidental or ancillary order.
- 52 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 (refer *Hancock v Executive Director of Public Health [2008] WASC 224*).
- 53 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.
- 54 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.
- 55 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*).

The Commission notes the words of Tamberlin J in *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 where he said:

- i. *“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.*
- ii. *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.”*

56 Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities Ltd supra*). The primary objects of the Act are:

- i. to regulate the sale, supply and consumption of liquor; and
- ii. to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
- iii. 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.

57 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]:

- i. *“[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”.*

- 58 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).
- 59 The licensee has presented its application with a strong focus on the provision of local WA produced wines, beers, ciders and spirits, and support for local WA producers. This, the licensee contends, will distinguish the proposed liquor store from other liquor outlets in the locality.
- 60 In support of this commitment, the licensee points to its long and proven history of successfully operating liquor stores and supporting local producers in WA.
- 61 Further, a number of WA wine producers have written in support of the application based on their knowledge and previous dealings with, and the support they have received from, the licensee in the past.
- 62 The licensee submits that being an independent liquor store, that is, not owned and operated by a national brand chain, the licensee will, and has demonstrated it can, provide a broader range of product, in particular those of small WA producers, and with extensive product knowledge and experience better meet the specific needs of customers and provide personalised customer service.
- 63 The consumer surveys conducted by the licensee, while tailored specifically for the purpose of the application, demonstrate support for an independent operated store and an interest in local WA alcohol products, and low alcohol and dietary specific products, not readily available elsewhere in the locality. A number of respondents provided additional comments in the surveys to this effect.
- 64 The probative value to be attached to the various letters of support must be assessed having regard to, among other things, the authors of the letters, the relationship and length of association between the applicant and the persons providing the letters, the reason the letters have been provided and what proposition the letters purport to support.
- 65 A number of letters of support submitted by individuals provide little or no evidence of the relationship between the individual and the licensee and, as a consequence, have little or no probative value.
- 66 The petition signed by customers of one of the small businesses and the supporting comments provided by the owners of the businesses within the

Duncraig Village Shopping Centre are of some probative value in assessing the positive aspects of the application. Clearly, the individual businesses (and the signatories to the petition) view the proposed liquor store as an improvement in the overall amenity of the shopping centre.

- 67 The local MLA for Carine submits that the addition of an independent liquor store “will help keep this small shopping strip more economically viable”. Whilst assertions alone are not evidence, it seems reasonable to infer that a well run and successful independent liquor store providing an outlet for local WA liquor providers will bring patronage to the shopping centre which may well benefit the other businesses and the centre more broadly.
- 68 Whilst some caution must be exercised in assessing the weight to be given to the letters of support from local producers (because of their commercial interest in securing outlets for their products and the somewhat similar format of the letters), in the Commission’s view the letters do have probative value and are important in corroborating the licensee’s previous business practice of supporting and supplying local producers’ products in circumstances in which the producers sometimes have difficulty obtaining outlets.
- 69 In this regard, it is worth highlighting portion of the letters signed by a number of local producers from the southern wine region of WA:

I know the proposed operators and I believe have (sic) a good first hand working knowledge of the packaged liquor industry in WA.

The proposed operators have promoted new wines, beers and ciders that other retailers are initially reluctant to stock and have supported our business previously by introducing <brand> wines to the market. We share their vision to cater to the needs of the public with changes in the alcohol product market such as the growing trend in the need for low-alcohol wine, organic, preservative free and dietary specific alcohol products.

- 70 The applicant, by reference to the Concise Oxford Dictionary definition of “proper development”, has submitted that the grant of the licence offers “nothing more than the usual or stock-standard facility available....and cannot be said to be proper development” (of the liquor industry). The applicant also submits the grant of the licence would not be a proper act of regulation in the sense of diversifying the liquor industry.
- 71 Of course, each case will depend on its particular circumstances, but in the Commission’s view, support for WA local producers by the stocking and promotion of their products, which may not be an avenue available at other liquor outlets, and the stocking and promotion of low alcohol and dietary specific products is in accordance with the proper development of the WA liquor industry and does reflect the diversity of the requirements of consumers in the State.

- 72 In this respect, the list of WA liquor, and low alcohol and dietary specific, products to be stocked in the proposed liquor store is extensive. The applicant's experience and knowledge of WA liquor products is also apparent based on its business background in the industry and the letters of support from the various producers. There is thus evidence before the Commission in this instance that the business style proposed by the licensee is consistent with the primary object of proper development of liquor industry.
- 73 The prospect or potential for harm or ill-health arising out of the grant of the licence in this case appears to the Commission to be minimal.
- 74 The level of alcohol related criminal behaviour in the vicinity of the proposed premises certainly appears to be low, as does the level of alcohol related hospitalisations for the locality.
- 75 The incidence of anti-social behaviour in the immediate vicinity of the liquor store premises is also relatively low.
- 76 The applicant has highlighted the local authority's decision to decline an application by McDonalds in 2012 to extend its drive through operation to 24 hours a day, seven days a week as support for the contention that people resorting to the McDonalds car park (which will also service the proposed liquor store) with fast food could potentially purchase packaged liquor to accompany their car park meal.
- 77 This behaviour, the applicant contends, would add to the problems identified at the site in terms of litter, noise and adverse amenity consequences, as well as expose juveniles visiting the site to liquor consumption in the car park.
- 78 It is, however, relevant that of the 15 complaints received by the local authority between 2009 and 2011, anti-social behaviour was but one of the concerns. The primary concern of the residents appeared to be noise and increased traffic.
- 79 The reason given by the Council for declining the application by McDonalds was that:
- The proposed development will adversely impact on the amenity of surrounding residents and the locality due to the potential increase in odour, noise and vehicular traffic utilising the site between 1.00 am and 6.00 am".*
- 80 The incidence of McDonalds' patrons consuming food in the car park is not apparent. Further, no evidence has been provided to demonstrate there is a real risk of persons purchasing alcohol to accompany their McDonalds meal.
- 81 The proposed liquor store has also committed to closing at 9.00 pm as a harm minimisation measure.

- 82 The Commission notes and agrees with the comment of the Director in his decision that “the co-location of fast food outlets and liquor stores already occurs across the metropolitan area without any of the assumed concerns put forward” and that “no evidence (has been) presented that this particular fast food premises and liquor store will result in anti-social behaviour...”.
- 83 Although the basis of council approval is governed by different legislation and considerations, the approval of the premises in the shopping centre for use as a liquor store suggests that the local authority does not have any concerns about the co-location of the liquor store and the McDonalds fast food outlet.
- 84 The close proximity of residential homes and aged care facilities to the proposed liquor store has been raised by the residential objectors and the applicant as a concern and basis for rejecting the application.
- 85 However, the nature and composition of the residential and commercial facilities in the vicinity of the Duncraig Village Shopping Centre appears to be not markedly different from that surrounding the other liquor stores in the locality and no evidence has been presented highlighting any anti-social problems in those locations, or explaining why those locations are any different in this respect to the proposed premises.
- 86 Moreover, the Police, in presenting the small number of police attendances at the proposed premises, have commented that “.....liquor stores, due to their nature of trade, will not have an overwhelming number of issues at the premises...”.
- 87 The Police have also highlighted the incidence of known domestic violence in the suburb of Duncraig. Any level of domestic violence is a concern and certainly any risk of an increase in the current level of alcohol related domestic violence is of particular concern to the Commission.
- 88 The statistics provided by the Police relating to domestic violence do not show any trend or comparison with other suburbs or a State average to assist the Commission in making an informed assessment of the potential for any increase in domestic violence as a result of the grant of this application.
- 89 The general research highlighted by the Police (Chikritzhs, T and Liang, W (2010): Violence in the night time economy: availability and amenity 2000/01. National Drug Research Institute, Curtin University of Technology) to the effect the volume of alcohol sold by “off-outlets” is strongly associated with the likelihood of an increase in violence is not particularly helpful without further information and analysis relevant to the particular circumstances of this application.
- 90 On the evidence presented, the Commission could not find with any confidence that the grant of the licence is likely to lead to an increase in domestic violence in the locality.

- 91 The fact that the existing liquor stores within the defined locality are located in small community shopping centres suggests that those stores are patronised, primarily, by local residents.
- 92 To this extent, therefore, the proposed liquor store will provide more convenience to people in the immediate vicinity and dispense with the need for some to travel a further distance to acquire their liquor requirements. Whilst this, of itself, does not demonstrate a requirement of consumers within the meaning of section 5(1) of the Act, it is, nevertheless, a factor to be considered.
- 93 More significantly, the proposed liquor store will provide greater diversity and cater to customers who have a particular interest in, and requirement for, local WA liquor products, including low alcohol and specific dietary products.
- 94 The applicant pointed to a previous decision of the Commission (*Independent Liquor Merchants Pty Ltd v Commissioner of Police & ors* supra) in support of the proposition that the additional proposed liquor store is not required in the locality.
- 95 However, as is evident from the Commission's decision in that particular case, the outcome of the application there was influenced by a range of factors, not the least of which were the failure of the customer surveys to demonstrate a requirement for the proposed liquor products and the failure to satisfy the Commission the local community's requirements were not being satisfied by the many and varied existing liquor outlets in the locality.
- 96 In addition, some, but not all, of the distinguishing features of that case are the demographic composition of the locality and the difference in nature and distribution of shopping centres and liquor outlets.
- 97 Further, in contrast to that case, the customer surveys presented with the current application demonstrate a requirement for an independent liquor store which has a proven capacity to provide, and is committed to providing, local WA liquor products otherwise not available in the locality.
- 98 There are also fewer liquor outlets in the locality presently under consideration, all of which are located within a small shopping centre within a specific neighbourhood, to service the requirements of the local community.
- 99 Whilst the application would have been strengthened by an explanation of the methodology and sampling technique adopted by the licensee to conduct the consumer surveys, the Commission is sufficiently satisfied in the circumstances of this application, that there is a consumer requirement for the new store and the range of local WA liquor products, including low alcohol and dietary products to be stocked in the store.

- 100 As indicated, the Commission acknowledges that the proposed liquor store will provide an element of convenience for customers shopping at other stores in the shopping centre. However, the Commission agrees with the Director that the principle of “one-stop” shopping as discussed by Buss J in *Woolworths Ltd v Director of Liquor Licensing* (2013) WASCA 227 is far removed from, and is not applicable in, this case.
- 101 The Duncraig Village Shopping Centre is an important part of the local community amenity and the commercial viability of the centre will be assisted by the establishment of a professionally and responsibly operated liquor store with a strong focus on local WA products.
- 102 The Commission has not been persuaded that the objections lodged by the residents or the applicant have been made out.
- 103 In weighing the positive and negative aspects of this application, the Commission is persuaded that the positive aspects outweigh the potential for any increase in harm or ill-health, or anti-social or criminal behaviour resulting from the grant of the application.
- 104 The applicant has demonstrated its credentials to operate a liquor store in other localities with a strong focus on local products and there is no reason to suppose the proposed liquor store will not add variety and broaden the range of liquor products available in the locality. The fact that local WA producers will have an outlet for their products, which may not form part of the product base of other outlets in the locality, would be expected to provide an attraction for customers to visit the shopping centre and thereby provide additional, and /or secure existing, employment in the shopping centre.
- 105 These factors, together with a consideration of the demographic composition of the locality, the type, number and location of existing liquor stores and the demonstrated requirement of consumers for an independent liquor store of the type proposed will be, in the Commission’s view, a not insignificant benefit to the community.
- 106 Accordingly, the Commission considers the grant of the application for a liquor store licence by Parkview Enterprises Pty Ltd and KMC Corporation Pty Ltd to operate a liquor store under the trading name Cellarbrations Duncraig (licensee) is in the public interest and meets the requirements of the Act.
- 107 The application is therefore refused and the Director’s decision to approve the licence is affirmed.
- 108 The Commission does regard it as important that licensees and licence holders generally engage and form ongoing relationships with key stakeholders in the locality to monitor and, if necessary, respond to any adverse impacts that may arise from the introduction and operation of licensed outlets. Accordingly, the Commission agrees with the conditions imposed on the licence by the Director

with the additional requirement for the licensee to become a member of the local Liquor Accord.

A handwritten signature in black ink, appearing to read 'Eddie Watling', written in a cursive style.

EDDIE WATLING
ACTING CHAIRPERSON