

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Woolworths Limited
(represented by Mr Gavin Crocket and Ms Susan Nicholson of Cullen Babington Macleod Lawyers formerly GD Crocket & Co)

Intervener: Commissioner of Police
(represented by Mr Peter Spragg of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan (Member)
Ms Belinda Lonsdale (Member)

Premises: Premises to be known as Dan Murphy's Joondalup situated at Lot 13, Joondalup Drive, Edgewater in the Joondalup Gate Commercial Centre.

Matter: Application for a conditional grant of a liquor store licence referred to the Liquor Commission under section 24 of the *Liquor Control Act 1988*.

Date of hearing: 19 November 2012

Date of Determination: 28 March 2013

Determination: The application is refused.

Authorities considered in the Determination:

- *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WASCA 175
- *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241
- *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142
- *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207
- *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356
- *Busswater Pty Ltd v Mr KV House and Mrs L V Verhoog* (LC 17/2010)
- *Element WA Pty Ltd v Director Liquor Licensing* (LC 32/2010)
- *Harold Thomas James Blakely v Director Liquor Licensing* (LC 44/2010)
- *Shallcross Investments Pty Ltd v Director Liquor Licensing* (LC 26/2010)
- *Ventorin Pty Ltd v Director of Liquor Licensing* (LC04/2009)
- *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384
- *Woolworths Ltd v Director of Liquor Licensing* (LC 34/2011)
- *Woolworths Ltd v Director of Liquor Licensing* (LC44/2011)
- *Woolworths Ltd v Director of Liquor Licensing* (LC 01/2012)
- *Woolworths Ltd v Director of Liquor Licensing* (LC 03/2012)

Introduction

- 1 On 19 December 2011, an application was lodged by Woolworths Limited ("the applicant") for the conditional grant of a liquor store licence for premises to trade as Dan Murphy's Joondalup, situated at Lot 13, Joondalup Drive, Edgewater in the Joondalup Gate Commercial Centre ("the premises").
- 2 On various dates between 19 January 2012 and 7 February 2012, objections to the application were lodged by various entities and individuals but it was determined pursuant to section 74 of the *Liquor Control Act 1988* ("the Act") that none of the objections were made out in terms of the Act and would not be heard.
- 3 On 1 February 2012, a notice of intervention was lodged by the Commissioner of Police ("the Police").
- 4 On 17 July 2012, pursuant to section 24 of the Act the Director of Liquor Licensing ("the Director") referred the application to the Liquor Commission ("the Commission").
- 5 A hearing before the Commission took place on 19 November 2012.

Hearing

Submissions on behalf of the applicant

- 6 The applicant seeks to operate a Dan Murphy's liquor store at Lot 13, Joondalup Drive, Edgewater, in the Joondalup Gate Commercial Centre. The application is for a conditional licence as the premises will be in an existing building which will require to be altered to suit the applicant's purpose.
- 7 The applicant has complied with all formalities in connection with the application, including payment of fees, advertising requirements, section 40 certificate, evidence of tenure and landlord's letter of consent and other relevant matters.
- 8 Agreement was reached covering confidentiality in relation to certain items of evidence.
- 9 The Public Interest Assessment ("PIA") and other documentation submitted in relation to the application included:
 - 9.1 a report and supplementary report by MGA Town Planners ("the MGA Report");
 - 9.2 a report by Canstar Blue on the consumer survey results;
 - 9.3 a report by Caporn Services on Health and the Environment;
 - 9.4 a "secret shopper survey" conducted by the applicant;
 - 9.5 a summary of survey questionnaires to which 40 responses were given;
 - 9.6 a petition register, signed by 1675 customers in support of the application;

- 9.7 details of the nature of the vicinity (radius of 200 meters) and the locality (radius of 3 km) of the premises and details of roads and traffic and parking in the vicinity and the locality. Relevant plans and maps were presented, including a plan of the centre;
 - 9.8 details of the demographics and social health of the locality and existing packaged liquor outlets in the locality – which number 12 (of which one is a “club” licence);
 - 9.9 details of the size of the premises (trading area of approximately 1128m² which will include a “fine wine” retail area of 168m² ;a cool room area of 71m² and a non-trading area of 259m² comprised of storage, offices, plant room and staff amenities);
 - 9.10 a code of conduct, harm minimization policy (management plan), house management policy, the applicant’s responsible buying charter and the applicant’s policy relating to “secondary supply”;
 - 9.11 statements of “witnesses”, essentially in support of the application.
- 10 The consumers need, as a requirement under section 38(2) of the Act is broad and it can and probably does under most circumstances extend to the proper development of the liquor industry and the proper use and development of licensed premises so as to reflect the diversity of consumers preferences in their shopping habits in Western Australia. The applicant’s case in establishing the public interest shows it is able to provide consumers with a variety of choice with a wide range of retail packaged liquor services and facilities coupled with responsible price competitiveness with shopping occurring in a well configured, purpose built premises with the business being operated to very high management standards. None of these services are currently available in the locality.
 - 11 The intervener does not oppose the application but brings to the attention of the Commission certain areas of potential harm and ill-health as a relevant consideration in the application.
 - 12 Other than a very limited number of harm and ill health issues the primary facts and evidence produced by the applicant’s material remain unopposed and unchallenged.
 - 13 The applicant submits in summary that it has done an extensive review of all the material factors, as identified by the policy directive of the Director of Liquor Licensing entitled “Public Interest Assessment Statement” policy guide dated May 2012. These include:
 - 13.1 a description of the proposed premises, the vicinity, the locality and Dan Murphy’s business operation at the proposed premises;
 - 13.2 evidence on exactly how the proposed premises will be managed and integrated into the locality;
 - 13.3 details on the community support for the establishment of a Dan Murphy’s outlet at the proposed premises;

- 13.4 an extensive examination of the demographic profile of the community;
- 13.5 an assessment of the locality's factors, including an analysis of its suburbs, major roads and traffic flows, including evidence (including plans) from MGA Town Planners of the physical distance between a number of large formal liquor stores including Dan Murphy's outlets, those being Currambine to Joondalup and Canningvale to Canningvale. The MGA analysis shows:
 - 13.5.1 Joondalup — Currambine — the road distance separating these two sites is 6.1 km (12.2 km round trip). Irrespective of whether Shenton Avenue or Hodges Drive is used as the connection to Joondalup Drive, there are 8 sets of traffic lights to negotiate either route;
 - 13.5.2 Canningvale — Cannington — the road distance separating the sites is 8.7 km (17.4 km round trip) with 6 sets of traffic lights to negotiate;
 - 13.5.3 Canningvale to Southern River (Brookland Tavern) — the road distance separating these two sites is 3.2 km (6.4 km round trip), there is only one set of traffic lights to negotiate on this route.
- 13.6 identifying whether there are any ascertainable “at risk” groups in the area (this has been done by way of consultation with Local Authorities, Police and with local groups in this area);
- 13.7 an assessment of the existing facilities and services on offer in this locality.

Submissions on behalf of the Commissioner of Police

- 14 The Commissioner of Police (“the Police”) intervened in the application proceedings for the purpose of making representations on the grounds that:
 - 14.1 *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 relevant to the public interest.*
- 15 The Police submitted a report outlining the grounds for intervention which report contained (in summary):
 - 15.1 the existing Dan Murphy's store in Currambine is in close proximity to the proposed premises;
 - 15.2 liquor stores sell more alcohol per licence than any other type of licensed venue. Even a small percentage change in availability and access to alcohol through liquor stores is likely to have an impact on alcohol-related harm in the local community;
 - 15.3 the IMS (Western Australian Police Incident Management Database) database reveals that there is already existing alcohol related harm occurring within the area of the proposed premises;

15.4 tables from the IMS and the Computer Aided Despatch System ("CAD") show reported crimes in the suburb of Edgewater (290) between January 2011 and December 2011 broken down into the various categories of recorded crimes, further broken down into alcohol (16) and non alcohol related crimes. Significantly, police CAD incidents identify (amongst other matters) 25 police attendances within a 300 m radius of the proposed premises covering a 12 month period from January 2011 to December 2011.

15.5 The Police do not support the application for the following reasons:

15.5.1 there are already sufficient liquor outlets in the area to satisfy the requirements of the public;

15.5.2 if the application were to be granted it would likely negatively impact on the amenity of the locality;

15.6 if the licensing authority is of the opinion that the application should be granted, the Police requests the following conditions be imposed and a list of conditions followed relating to the following matters:

- CCTV surveillance
- Compliance with harm minimization policy
- Juveniles prohibited
- Signage
- Mandatory training – responsible service of alcohol
- Training register
- Incident register
- Dress standards
- General – approved manager must be present during hours of trading and no discounting or advertising of liquor in the vicinity of the store.

Determination

16 This application relates to the establishment of a liquor store in the Joondalup Gate Commercial Centre under the Dan Murphy's brand.

17 The proposed store is large by Western Australian standards (approximately 1130m²) and is described by the applicant as a "destination" liquor store drawing customers from a geographically wide area rather than a "convenience" liquor store catering for the needs of a local (geographically small) community. In other words the destination liquor store is sufficiently attractive to warrant a customer travelling some distance to patronize it, carrying a wide range of stock including fine wines and delivering highly competitive, indeed often significantly discounted prices.

- 18 In determining whether the grant of an application is in the public interest, the Commission needs to exercise a discretionary value judgment confined only by the subject matter and the scope and purpose of the legislation

(Re Minister for Resources: ex parte Cazaly Iron Pty Ltd (2007) WASCA 175 and Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7 WAR 241).

- 19 Tamberlin J in *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142* summarized the position thus:

“... the expression “public interest” 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 a 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 that public, society or the nation and its content will depend on each particular set of circumstances.”

- 20 Section 33(1) of the Act gives the Commission a wide power to grant or refuse an application on any ground or for whatever reason that the Commission considers to be in the public interest. This is an absolute discretion confined only by the scope and purpose of the Act.

(See Hermal Pty Ltd v Director of Liquor Licensing [2001] WASC 356 at (6) – (7) per Wallwork J and Palace Securities v Director of Liquor Licensing [1992] 7 WAR 241 at 249-50 per Malcolm CJ and at 263 per Wallwork J).

- 21 Whilst exercising its discretion in determining whether or not the grant of an application is in the public interest pursuant to section 33(1) of the Act, the licensing authority is also required to consider the objects of the Act pursuant to section 5 and the provisions of section 38 of the Act.

- 22 Section 5 of the Act states that the primary objects of the Act are:

(a) to regulate the sale, supply and consumption of liquor; and

(b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor; and

(c) to cater for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

- 23 The *Interpretation Act 1984* at section 19 provides that regard may be had to extrinsic material, including a Second Reading Speech to a Bill, when considering the meaning and intent of a written law.

- 24 During the Second Reading Speech which accompanied the introduction of the *Liquor and Gaming Legislation Amendment Act 2006* (see Parliamentary Debates, WA Parliament, vol 409, p 6342) the then Minister for Racing and Gaming, the Hon. Mr Mark McGowan MLA, stated:

“A key reform is the creation of the public interest test... Under the public interest test, all applicants will be required to demonstrate that the application is in the public interest and the licensing authority will be required to consider the application based on the positive and negative social, economic and health impacts of the community... it should be noted, however, that the government does not consider the proliferation of liquor outlets to be in the public interest and proliferation is not an outcome that would be supported by the public interest test.”

- 25 In meeting the applicant’s obligations in respect of establishing the public interest and satisfying section 5(1)(c) of the Act, regard must be had to the requirements of consumers of liquor and related services. The applicant must present supporting, (objective where possible) evidence at an appropriate level to satisfy the Commission. The Commission has previously considered that it is not sufficient for an applicant merely to express opinions and make assertions about perceived benefits of an application. Such opinions and assertions must be supported by an appropriate level of evidence.

(Refer Busswater Pty Ltd v Mr KV House and Mr LV Verhoog [LC 17/2010] at [36], Element WA Pty Ltd v Director of Liquor Licensing [LC 32/2010] at [23], Harold Thomas James Blakely v Director of Liquor Licensing [LC 44/2010] at [39] and Shallcross Investments Pty Ltd v Director of Liquor Licensing [LC 26/2010] at [18].

- 26 Therefore, whilst section 38(4) of the Act is directed to the potential negative impact of an application, these are not the only matters for consideration. In considering the public interest under section 38, the licensing authority needs to consider both the positive and negative social, economic and health impacts that the grant of an application will have on the community.

(Refer Woolworths Ltd V Director of Liquor Licensing (LC 34/2011) at para 38)

- 27 The proposed liquor store is to be located in a commercial centre and whilst a number of objections were lodged none of these were, in the opinion of the Commission, properly made out as required under the Act and were struck out.

- 28 The applicant submitted that the Police did not oppose the application. It is, of course, not the role nor is it the prerogative of an intervener to oppose an application but to draw the attention of the Commission to particular matters it considers relevant in the Commission arriving at its determination. The point is taken by the Commission that the Commissioner of Police chose to intervene rather than oppose the application.

- 29 The applicant lodged a comprehensive Public Interest Assessment addressing the matters it considered relevant to establishing that the application was in the public interest.

- 30 The applicant contends that the proposed liquor store will provide customers with a wide variety of choice with a range of retail packaged liquor on offer, excellent facilities coupled with responsible price competitiveness being offered in a well configured purpose built premises with very high management standards.

- 31 The applicant submits that none of these services are currently available in the locality. The Commission agrees with this view if and only if, the locality is narrowly defined geographically. The locality guideline published by the Director refers to a radius of 3km from the liquor outlet (Joondalup being more than 15 kms from Perth CBD). However the present application is for a liquor store described by the applicant

- as being a “destination” liquor store the purpose of which is to draw custom from a much wider geographical area.
- 32 The Commission is of the view that the concept of locality in the context of an application for a *destination* liquor store means the geographical area from which the proposed Joondalup liquor store might be expected to draw custom (refer para 30 above).
- 33 The Commission accepts that Dan Murphy’s liquor outlets are well managed and have adequate, well documented and entrenched harm minimization policies which to a large extent mirror the conditions suggested by the intervener.
- 34 The applicant advanced evidence to support that there was a reasonable requirement of the public for the outlet including the survey questionnaire and the report by Canstar Blue on the consumer survey results as well as a petition signed by 1675 people.
- 35 Historically, the Commission has tended to treat petitions with some caution. Whilst giving an indication of the public’s level of support for the establishment of an outlet, petitions rarely, if ever, by their nature, give an indication of the number of people with a contrary view.
- 36 The applicant submitted a number of witness statements. These statements from a variety of people added further weight to the view, accepted by the Commission, that Dan Murphy’s outlets are well managed employing well trained staff and providing a high level of service to its clientele.
- 37 The MGA Town Planners report states that “*there are no packaged liquor outlets within the Joondalup Strategic Metropolitan Centre or that locality as a whole providing a comparable range of product and service... The proposed Dan Murphy’s store will therefore provide a new amenity to the locality*”.
- 38 However evidence before the Commission suggests that there are 12 other liquor outlets in the locality, the presence of two of which are of particular relevance namely Dan Murphy’s branded outlet at Currambine only 6.1km by road and a Woolworths branded outlet to the immediate north in the regional shopping centre.
- 39 The applicant draws attention to the Commission’s decisions in respect of Dan Murphy’s Canning Vale and Dan Murphy’s Cannington – two “destination” liquor stores within 9km of each other. (Refer LC 03/2012 and LC 01/2012.)
- 40 Whilst there are similarities in terms of the establishment of Dan Murphy’s outlets in relatively close proximity, each application must turn on the particular facts of that application.
- 41 The distance separating the suburbs of Canning Vale and Cannington is greater than the distance between the proposed Dan Murphy’s at Joondalup and the established liquor store at Currambine. More importantly the geography of Cannington and Canning Vale is significantly different with clearer delineation between the catchment areas and a natural barrier (Albany Highway) separating them as well as a very different connecting road system.
- 42 The applicant submits that reliance on the Second Reading Speech to the 2006 amendments to the Act is of little assistance as it fails to resolve any of the ambiguity in the meaning of the term public interest in the Act. The applicant contends that “*On the one hand, the Minister explained that a significant purpose of the amendments was to*

promote “a more competitive, responsible and dynamic liquor environment”, including promoting innovation, diversity and small business opportunities, but on the other hand the Minister expressed a policy against proliferation of liquor outlets, saying that such proliferation could not be supported by the Public Interest test: 20 September 2006 Hansard .pp.6341-6342.”

- 43 The issue of public interest and the difficulties associated with its definition have been the subject of considerable judicial comment (see para 19 above).

In *Woolworths Ltd v Director of Liquor Licensing [2012] WASC 384* at 39 Heenan J said:

“Consistently with the objects of the Act and its purposes to be taken from the legislation as a whole, the licensing authority is constituted the arbiter of the public interest in this domain. Inevitably, because of the breadth of its discretionary consideration, already described, there are likely to be differences, even broad differences, of view about whether or not a particular application is within the public interest or even whether it is consistent with the proper development of the liquor industry. Those are determinations which are entrusted to the Commission which is especially appointed, selected and empowered to make them. Unless an error of law is demonstrated in the process of reasoning, or the approach taken to the performance of the task which leads to the decision, there is no scope for such an interference by this Court on an appeal such as this. The fact that some other person, body or group of persons may take a different view about the relevant ‘public interest’ or the consistency of the decision with regard to the proper development of the liquor industry, or even the diversity requirements of consumers in the State does not establish any such error of law. Such a decision has been entrusted by Parliament to the specialist body whose decisions will often need to be made when there are significant factors to be considered for or against a particular applicant or as to where the public interest lies in the particular case”.

- 44 Heenan J (supra) at paragraphs 52 & 53 further observed:

“...I have previously concluded that the primary objects of the Act set out in s5(1)(c) are not the only or the exclusive objects of the Act and, except to the extent of any inconsistency, do not restrict considerations of the public interest required by s 33(1) or s38(2).

Because the appellant has emphasized the potential significance of the primary objects of the Act set out in s 5(1)(c), it is necessary to observe that another primary object specified by s 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 the diversity of the requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it.”

- 45 The Commission does not accept the applicant's argument that the number of sets of traffic lights (8) amounts to any real barrier separating the drawing area of the two locations. The Commission sees the Currambine Joondalup geography as indicative of, at the very least a largely overlapping catchment.
- 46 Dan Murphy's outlet at Currambine is also a “destination” liquor store as described earlier in paragraph 37. This application effectively turns on whether the Commission

is satisfied on the evidence that establishing another “destination” liquor store in such proximity is in the public interest in keeping with the intent of object 5(1)(c) of the Act.

- 47 In *Woolworths Ltd v Director of Liquor Licensing*, supra [at 41] Heenan J made the following point which the Commission has particularly regard to:

“...the Act as a whole establishes a regime for the control and regulation of liquor outlets and a restriction of them to those applicants and places which can meet the criteria of the Act. The Act does not proceed on the basis that there is a presumption in favour of a grant of a licence, rather the reverse, than an applicant must demonstrate that it is in the public interest that an application should succeed. Just because an application may be for a bigger, more efficient or more popular liquor outlet and that such an outlet may involve the development of the liquor industry does not entitle such an application to proceed. Wider considerations involving the public interest must also be assessed and determined.”

- 48 The Commission in *Dan Murphy’s Bicton* supra (LC 34/2011) at para 46 noted that:

“The Director of Liquor Licensing raised concerns about the potential impact that the grant of the licence may have on the capacity of existing licensed premises to continue to offer services in respect of the supply of liquor and related services to members of the public in the locality. The scheme of the Act is not about protecting the market share of individual licensees; however the diminution of services to a community if a particular licence is granted may be part of the public interest consideration, depending on the individual circumstances. However in this case, there was no compelling evidence that the grant of this application would have such a result.”

- 49 Unlike the application in Bicton where the Commission found that there was no compelling evidence that the grant of application would result in diminution of services if a particular licence is granted, the existence of a large destination liquor store only 6.1 kms away from the proposed premises is of concern to the Commission when having regard to the object of the Act to cater for the requirements of consumers for liquor and related services, with regard to proper development of the liquor industry, the tourism industry and other hospitality industries in the state.

- 50 In an application by Woolworths Ltd for a Dan Murphy’s liquor store in South Fremantle (LC 44/2011 para 82) the Commission stated:

“In reaching its determination, while the Commission has placed some value on the generally demonstrated acceptance by consumers of the Dan Murphy’s style of operation, this application has been assessed as it being in the public interest to approve the application to establish a Dan Murphy’s store in this locality where there are no other large outlets providing a diverse range of product”.

- 51 The present application is distinguishable on the basis that there is already a Dan Murphy’s “destination” liquor store in close proximity to cater for the needs of consumers.

- 52 The Commission also notes that the private interests of an applicant wishing to establish a liquor outlet in a particular locality should not be confused with the public interest. The requirements of the Act are directed to ensuring that the licensing authority takes a balanced approach to the granting of new applications and concern itself with the public’s interest rather than private interests.

(Refer *Shallcross Investments Pty Ltd v Director of Liquor Licensing* [LC 26/2010] and *Harold Thomas James Blakely v Director of Liquor Licensing* [LC 44/2010].

- 53 The Commission in *Ventorin Pty Ltd v Director of Liquor Licensing* (LC04/2009) observed that:

“A matter often overlooked in arguments for these sorts of permits is that the Commission must look at the whole of the Act to gain an understanding of the intention of the legislature. In terms of s 5(1)(c) of the Act, the first primary object of the legislation is:

- *to regulate the sale, supply and consumption of liquor.*

There is an expectation in the Act that the Commission will regulate the supply of liquor subject to the various provisions of the Act weighed up against the particular merits of the each application. The disposition of the Act, read as a whole, is to regulate.”

- 54 The Commission is of the view that establishing a Dan Murphy’s style liquor store in this location is not consistent with the proper development of the liquor industry, given there are indeed other large outlets providing a diverse range of product through Dan Murphy’s Currambine and Woolworths Joondalup as well as a number of other convenience liquor store outlets in the locality.
- 55 As such the Commission considers that the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry are currently adequately catered for in this locality by the existing providers of packaged liquor services.
- 56 The Commission would hasten to add that this should not be confused with protecting licensees from competition or protecting existing market share. Rather it is consistent with the intent of the Minister expressed in the Second Reading Speech for a vibrant, robust and varied liquor industry.
- 57 During the Second Reading Speech which accompanied the introduction of the *Liquor and Gaming Legislation Amendment Act 2006* (see *Parliamentary Debates, WA Parliament, vol 409, p 6342*) the then Minister for Racing and Gaming, the Hon. Mr Mark McGowan MLA, stated:

“The Government is determined to promote innovation and diversity in the way liquor services are provided to consumers and provide opportunities for small businesses.....

.....It is time Western Australia’s liquor laws reflected the realities of life in our state. People are looking for choice and opportunities. Small businesses want the chance to provide new and different services to their customers. Entrepreneurs are keen to explore ways to appeal to locals and visitors alike....our citizens are more sophisticated and discerning and want to have more freedom in how they spend their disposable incomes. This bill meets all those objectives.”

- 58 In addition to the Commission’s comment at para 53, it is relevant to note the findings of a widely published and generally accepted body of academic research that has found a strong correlation between outlet density and alcohol related harm.

- 59 Findings of a recent report “*Access to Alcohol Outlets, Alcohol Consumption and Mental Health*” authored by Gavin Pereira, Lisa Wood, Sarah Foster and Fatima Hagggar found that the number of liquor stores in the neighbourhood was weakly associated with total alcohol consumption, but more strongly associated with harmful consumption. The report also found strong evidence for a small association between residential exposure to liquor stores and harmful consumption of alcohol and some support for a moderate sized effect on hospital contacts for anxiety, stress and depression.
- 60 The report also provides a supplementary discussion on *potential* pathways between alcohol outlet density and mental health. It has been hypothesised that “*increased outlet density can impact on alcohol related harm via an ‘economic’ pathway whereby increasing the number of alcohol outlets reduces the real cost of alcohol (incorporating the convenience of making a purchase along with the monetary price), thus increasing consumption and related problems*”. Similarly it has been suggested that alcohol availability, particularly outlet density can increase market competition and thereby make discounted alcohol more available to those already predisposed to harmful alcohol consumption.
- 61 Bell J in *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207 at [183] said (and which the Commission also noted in its determination *Liquorland (Australia Pty Ltd) v Executive Director of Public Health & Ors* (LC 18/2012) at [71]):
- “But 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 circumstance, assist in determining the likelihood that harm is occurring or will occur, the nature of that harm and what contribution can be made to 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”*
- 62 Whilst this report has not been the basis of the determination, the findings of the report are relevant and assist in determining the likelihood that harm is occurring or will occur.
- 63 The addition of another “destination” liquor store at the proposed location will significantly increase outlet density to the extent that the Commission is not persuaded that it is in the public interest to approve the application.
- 64 In accordance with the discretion afforded to the licensing authority under section 33(1) of the Act the application is refused.



MR J FREMANTLE
CHAIRPERSON