

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

Applicant: Woolworths Limited
(represented by Mr Gavin Crocket of GD Crocket & Co)

Intervener: Executive Director of Public Health
(represented by Mr Sam Nunn of State Solicitor's Office)

Objectors: Orebo Pty Ltd
(represented by Mr Peter Fraser of Dwyer Durack)

Mr. Peter Staiger

Commission: Mr Eddie Watling (Deputy Chairperson)
Ms Helen Cogan (Member)
Mr Greg Joyce (Member)

Date of Hearing: 4 July 2011

Date of Determination: 13 October 2011

Premises: Premises to be known as Dan Murphy's Liquor Store,
situated at 256 Hampton Road South Fremantle.

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

Determination: The Application is approved.

Authorities Referred to by the parties and considered in Determination

Palace Securities v Director of Liquor Licensing (1992 7 WAR 241 per Malcolm (CJ)

Introduction and Background

- 1 On 18 October 2010 an application was lodged by Woolworths Pty Ltd (“the Applicant”) for the conditional grant of a liquor store licence for premises to trade as Dan Murphy’s South Fremantle, located at 256 Hampton Road South Fremantle (“the Premises”).
- 2 On 18 November 2010 a notice of objection was lodged by Peter Colin Staiger, licensee of a liquor store approximately 300 meters from the premises.
- 3 On 25 November 2010 a notice of objection was lodged by Orebo Pty Ltd (licensee of Moondyne Joes, premises situated at 73 Wray Avenue Fremantle).
- 4 On 1 December 2010 a notice of intervention was lodged by the Commissioner of Police (on 28 June 2011 this notice of intervention was withdrawn).
- 5 On 17 December 2010 a notice of intervention was lodged by the Executive Director of Public Health (EDPH) and this notice was supplemented by letters dated 22 December 2010 (lodged 29 December 2010) and 5 January 2011 (lodged 7 January 2011) respectively.
- 6 On 9 February, 2011, pursuant to section 24 of the *Liquor Control Act 1988* (“the Act”), the Director of Liquor Licensing (“the Director”) referred the Application to the Liquor Commission (“the Commission”).
- 7 A hearing before the Commission was held on 4 July, 2011.

Hearing

Preliminary Matters

- 8 The Commission dealt with a number of preliminary matters as follows:
 - 8.1 Index of documents – the Applicant questioned as to whether all of the papers before the parties were in fact listed in the index that had been circulated prior to the hearing. Due to the large volume of material there was some uncertainty as to where particular papers might be located. This was resolved on the basis that any such issues would be dealt with by the Commission as and when they arose during the hearing to ensure that all parties had a copy of the relevant papers before them during submissions.
 - 8.2 The issue of certain material lodged after 31 May 2011 (in fact on 17 June 2011) was resolved by a determination that such material would be excluded, but marked for identification:

- 8.2.1 Document entitled “Comments on Somerford and Bangor-Jones Response to Data Analysis Australia’s Report on Dan Murphy’s Outlets”, by Data Analysis Australia Pty Ltd, dated 8 June 2011 (“MFI 1”);
- 8.2.2 Document entitled “Comments on Catalano’s Response to Data Analysis Australia’s Review on Chikritzhs et al” by Data Analysis Australia Pty Ltd dated 8 June 2011 (“MFI 2”).
- 8.3 By way of an interlocutory application lodged on 27 June 2011 the Applicant sought:
- 8.3.1 The striking out of certain material in the notice of intervention lodged by the Executive Director of Public Health, on the basis that such material was not relevant and outside the scope of sections 69(8a) and 69(8b) of the Act.
- It was determined that all of the material submitted by the Executive Director of Public Health would be accepted and the issue of relevance and the weighting applied to that evidence would be dealt with in the course of the hearing and in the final determination.
- The issue of the form and validity of the notice(s) of intervention by the Executive Director of Public Health was resolved by the agreement of the parties that this would not be argued, only the substantive issues raised in the notice of intervention.
- 8.3.2 The striking out of certain material in the notice of intervention lodged by the Commissioner of Police.
- It was determined that, due to the subsequent withdrawal of the notice of intervention, all related material would be disregarded.
- 8.4 That the Commission order that the “locality” for the purposes of the application is a 3km radius from the premises as prescribed by the Director’s Policy Guide entitled “Specification of Locality”, dated 28 February 2011.
- It was determined that “locality” would be a radius of 3 kilometers from the premises as applied under section 38(4)(b) of the Act.
- 8.5 The issue as to whether Mr. Peter Staiger is properly a party to these proceedings was resolved by a determination that the legalities and the weighting, if any, of Mr Staiger’s objection would be considered by the Commission in the course of its deliberations and in the making of its determination.
- 8.6 The issue of the provision by the Executive Director of Public Health of the Data Analysis Australia Report to the authors of the study entitled “Predicting

Alcohol – Related Harms from Licensed Outlet Density: A Feasibility Study” had been resolved prior to the hearing by the execution of a binding confidentiality agreement between the relevant parties

Submissions by the Applicant

- 9 The Applicant seeks to open a Dan Murphy’s liquor store at 256 Hampton Road, South Fremantle. The proposed liquor store will be within an existing large warehouse styled building which is currently run-down, unappealing and in need of improvement. If the liquor licence application is approved the building will be suitably refurbished.
- 10 Relevant documentation including, but not limited to, a Public Interest Assessment (“PIA”), Harm Minimisation Policy, Management Plan, House Management Plan and Code of Conduct for a Dan Murphy’s liquor store had been submitted.
- 11 All other formalities required in connection with the application including advertising requirements and other relevant documentation had been completed and lodged by the Applicant.
- 12 The total floor area of the premises will be approximately 1,557m² comprising a total trading area of 1,178m² (including a “fine wine” retail area of 316m² and cool room of 81m²). The non-trading area will be 379m² (including 238m² of general storage, secure storage of 40m², offices and staff amenities – floor plan provided).
- 13 The immediate area surrounding the premises consists primarily of other commercial and industrial properties. There are no sensitive premises (such as refuges and hostels, drug and alcohol rehabilitation or treatment centres, or child care centres) within the vicinity and the closest residence is approximately 150 meters to the south.
- 14 Hampton Road is currently the major north/south link in the locality and carries volumes consistent with those recorded on regional highways in the metropolitan area, with evening peak traffic heavily weighted in a north-south direction.
- 15 It was submitted that Dan Murphy’s provides a “shopping experience” offering a full and unrivalled matrix of packaged liquor services, with an emphasis on fine wines, at the one location, with many aspects being unique when compared to other packaged liquor outlets. Further, Dan Murphy’s brings its long history of commitment to excellence by sharing with its customers its passion, knowledge and the enjoyment of “opening” a bottle of wine, spirits or beer.
- 16 The premises will offer a full range of Dan Murphy’s services and facilities and will be a high quality, well managed “department” destination liquor store which specialises in a broad range of all liquor products (specifically premium and commercial wines) with between 3,500 and 4,000 product lines.

- 17 The core aims of the Dan Murphy's business are fine wine, staff knowledge and superior customer service which will include:
- Twice weekly wine tastings;
 - Speciality events;
 - Gift cards;
 - Free customer information and education;
 - Event planner services; and
 - Trolleys for customer use.
- 18 Underpinning the premises will be extensive resources and infrastructure including;
- The Dan Murphy's Fine Wine managers;
 - The Dan Murphy's Wine Panel;
 - The Dan Murphy's cellar release program; and
 - The Dan Murphy's Fine Wine Buyers Guide (a regular publication).
- 19 The range of products will include:
- International wines and premium liquor products, with selections available by region and variety;
 - Wines from all over Australia;
 - Local wines;
 - Premium and iconic wines;
 - Brands exclusive to Dan Murphy's;
 - Rare and collectable wines; and
 - New and emerging styles and products from both established regions and new geographic areas.
- 20 It was submitted that the Applicant had a very positive record of management responsibility incorporating applying standard national management policies in relation to harm minimisation strategies, the introduction of initiatives to help raise public awareness on such issues as the illegality of secondary supply, i.e. supplying alcohol to minors, and the implementation of a broad range of environmental initiatives at its premises e.g. promoting alternatives to plastic bags and the active re-cycling of packaging materials.

- 21 The Applicant has also initiated a number of voluntary restrictions on product range and trading hours in its stores in remote areas where there are social issues and has implemented specific measures promoting the responsible consumption of alcohol at its stores located in “schoolies” areas.
- 22 Dan Murphy’s stores are specifically designed to ensure full surveillance of the retail area by numerous staff at any one time as well as having visible security measures such as CCTV and clear and prominent signage.
- 23 The locality of the premises includes the suburbs of South Fremantle, Beaconsfield and White Gum valley as well as parts of Fremantle, O’Connor, Hilton, Samson, Hamilton Hill, Spearwood and North Coogee. In 2006, 27,483 persons lived within the locality – it is estimated that the current population is 27,480 people.
- 24 The following demographic data is considered relevant:
- Overall the population is adult – 66.9% are aged 30 years and above;
 - The number of indigenous persons is lower than the WA average but higher than the Perth Statistical Division (PSD) average (2.1% for the locality compared to 1.5% for PSD and 3.5% for WA);
 - The proportion of young people in the locality (aged between 20-29 years of age) is less than PSD and WA proportions (12.5% for the locality compared to 14.1% for PSD and 13.3% for WA);
 - There is a lower number of teenagers in the locality (aged between 15 to 19 years of age) than PSD and WA proportions (5.4% for the locality compared to 7.4% for PSD and 13.3% for WA).
- 25 It was submitted that overall, the demographic profile of the community is fairly consistent with that of Perth as a whole.
- 26 With regard to social health indicators for the locality it was submitted that health data evidences that the South Metro Area Health Service region, within which the locality is located, experiences less liquor related health issues than the WA state average.
- 27 Other evidence submitted in support of the PIA and considered by the Commission included expert reports and witness statements – “Statement of Dr. Henstridge”, “Statement of Mr. Martin Smith”, MGA Town Planner Report (2)”, “Caporn Services Report” and “Data Analysis Australia Pty Ltd Report”.
- 28 In addition to the PIA and the documents contained or referred to in the PIA the Applicant also lodged the following documentation as further and additional evidence upon which the Applicant relies to support the application:
- Full Index of Documents, Volume 2;

- Statement of Evidence by Mr. Paul King;
- Analysis of Crime rates – Dan Murphy’s stores near 1st Choice Liquor stores;
- Review of the impact of sales of Woolworths outlets when Dan Murphy’s store opened in other areas.

29 In a review of the liquor outlets of the locality, the Caporn Report observed that:

“ There is only one other liquor store within a kilometer of the proposed Dan Murphy’s Liquor store, being within a shopping centre on the corner of Hampton Road and Douro Road. There are three drive throughs attached to taverns, these being Edz Sports Bar on Cockburn Road and at Davilak and Seaview Taverns on South Terrace”.

30 With regard to consumer demands and trends, modern consumers are becoming more and more sophisticated and discerning in their requirements and this also applies to packaged liquor. The key factors that determine where a person will purchase liquor are:

- Location;
- Price; and
- Product range.

31 It was submitted that a market survey undertaken by Dan Murphy’s in the eastern states in 2007 revealed that, compared to other major liquor store chains, Dan Murphy’s :

- Is the preferred liquor store of choice by consumers;
- Is the market leader in meeting functional customer needs such as:
 - providing good value for money;
 - offering consistently low prices;
 - quick and efficient service;
 - always having what the customer wants; and
 - outperforms other liquor outlets in terms of store facilities, services and products.

32 In October 2010 the Applicant’s representatives attended (as guests) meetings of two representative groups being the Beaconsfield Precinct Group and the South Fremantle Precinct Group with total attendances of approximately 15 and 17

respectively. Overall around a third of the participants at each meeting supported the Application, a third were ambivalent and a third did not support it.

33 The Applicant also sought the views of residents by way of a survey questionnaire. There were 18 respondents, the majority of whom supported the development proposal.

34 To discharge its onus under section 38(2) of the Act the Applicant completed an extensive empirical study which involved the following:

- identification and review of market research and relevant data;
- investigations into the nature of the locality (three kilometers from the premises);
- field assessments and site visits;
- research and analysis of demographic data for the locality, publicly available data on alcohol related harm, health and crime and relevant literature;
- consulting with the relevant stakeholders, such as the City of Fremantle, the City of Cockburn and the WA Police;
- a comprehensive review of the other packaged liquor outlets in the locality including the “Secret Shopper Survey” (defined in and annexed to the PIA) and the Smith Field Notes (defined in and annexed to the PIA) to assess the range and depth of products stocked by existing packaged liquor outlets;
- commission of the Impact Review Report (defined in and annexed to the PIA) to analyse the measurable impact on liquor related harm resulting from the operation of certain existing Dan Murphy’s stores in Western Australia;
- a review of the provisions of the Act distinguishing how its provisions sharply differ from the previous liquor licensing legislation in Western Australia.

35 The PIA is a summary of the data, facts and evidence compiled by the Applicant.

36 The Applicant lodged:

- its response to the intervention by the Executive Director of Public Health;
- its response to the intervention by the Commissioner of Police (no longer relevant);

- its response to the notice of objection by Orebo Pty Ltd;
- its response to the notice of objection by Peter Staiger.

37 On 21 June 2011 the Applicant lodged its responsive submissions which related to:

37.1 Construction of the Act with particular reference to “The Public Interest”:

37.1.1 in relation to harm and ill-health;

37.1.2 by reference to the primary objects;

37.1.3 what evidence is relevant for consideration in relation to the application.

37.2 the submissions of the interveners and objectors.

37.3 Merits of application and key evidence:

37.3.1 statutory compliance with the provisions of the Act;

37.3.2 the Public Interest;

37.3.3 locality;

37.3.4 the legal approach relating to practice, procedure, evaluating evidence, admitting material and other information in relation to proceedings before the Commission;

37.3.5 Rebuttal Evidence

The Applicant submitted that until such time as there is evidence of ill-health or harm in a community or group within a community, then the development of the liquor industry with the increase and diverse supply of liquor is to be encouraged.

The rebuttal evidence relied upon are the reports of Data Analysis Australia Pty Ltd together with Dr Henstridge’s statement (Annexure 5 in the PIA), the Caporn Reports, the MGA Report, the statement of Paul Kelly, the Secret Shopper Survey undertaken by employees of the Applicant, the reports of the interview with key Dan Murphy’s personnel and the analysis of before and after crime statistics relevant to the Dan Murphy’s Balga, Midland and Morley stores.

Collectively this body of evidence is seen as demonstrating that the possibility of any impact to the community being caused by

the introduction of a Dan Murphy's outlet, as per the application, is small and probably not measurable.

38 In relation to the requirements of consumers, the granting of this licence would provide:

- modern facilities;
- range and depth of products and services;
- accessibility;
- choice and competition;
- superior customer service;
- competent staff;
- responsible management; and
- customer education.

39 It was submitted that Dan Murphy's has revolutionised the retailing of packaged liquor with its distinctive and unique matrix of packaged liquor products and services that are greater than the average liquor store and it is therefore clear that;

- the business to be operated at the premises will cater to the modern consumer demands for packaged liquor;
- the services and facilities to be provided by the premises will result in the proper development of the liquor industry;
- the risk of liquor related harm and ill-health resulting from the operation of the premises is minimal and will be ameliorated by the Applicant's stringent and effective management practices;
- market surveys reflect Dan Murphy's is the preferred place to shop for packaged liquor; and
- the significant growth in the customer numbers at the Applicant's former BWS stores (now re-branded as Dan Murphy's) demonstrates a strong need for this style of packaged liquor outlet and its modern retailing concepts.

Submissions by Executive Director of Public Health (EDPH)

- 40 On 22 December 2010 the EDPH filed and served on the Director of Liquor Licensing (DLL), evidence and submissions supporting the EDPH's notice of intervention, which had been lodged on 17 December, 2010.
- 41 On 7 January 2011 the EDPH provided further submissions to the DLL.
- 42 On 17 May 2011 the EDPH lodged an outline of submissions. In addition the EDPH made oral submissions at the hearing.
- 43 The purpose of the intervention was to make representations regarding the potential for alcohol-related harm associated with the present application for a liquor store licence and the minimisation of that harm or ill-health. The grounds being:
- 43.1 The Dan Murphy's South Fremantle liquor store intends to be very large in size, located on a main arterial road and will provide cheap liquor at a lowest price guaranteed;
- 43.2 The above features of the proposed liquor store each propose an increased risk of the occurrence of alcohol-related harm;
- 43.3 The risk of harm associated with each of the characteristics of the Dan Murphy's South Fremantle store is exacerbated when introduced into an environment that contains existing risk factors;
- 43.4 The locality of the proposed venue contains numerous risk factors including:
- The existing liquor availability in the locality and surrounds;
 - The social profile of the population in the locality includes at-risk groups; and
 - Since the beginning of 2009, almost half of the reported assault and domestic violence offences in the locality have been alcohol-related;
- 43.5 The risk of harm associated with the features of the Dan Murphy South Fremantle store, in conjunction with the characteristics of the locality within which it will be located, is supported by research which shows that:
- Increasing the physical (access) and economic (price) availability of liquor leads to increased consumption or higher risk drinking patterns and related harm;
 - Liquor purchased at liquor stores contributes to alcohol-related harm in the community;

- Increased availability to at-risk groups can lead to increased levels of consumption and harm.
- 44 The EDPH provided a substantial amount of research material to support the submissions including research material relating to the links between the price of alcohol and harm and the links between outlet density and harm.
- 45 The EDPH submitted that the Applicant's own evidence confirms the presence of high risk factors of cheap liquor, liquor store size, close proximity to other licensed premises and the presence of at-risk groups. The associated increase in physical and economical availability of packaged liquor and an increase in the levels of harm have been shown in a number of studies. Accordingly, the impact of these factors on alcohol-related harm and ill-health needs to be considered.
- 46 Much evidence of alcohol related harm will be general in nature and in response to certain submissions made by the Applicant the EDPH conceded that some of the information provided by the EDPH is not site specific but is not necessarily required to be.
- 47 In conclusion the EDPH submitted that the impact of increasing the physical and economical availability of packaged liquor and the potential for even a minimal increase in the risk of alcohol related harm are relevant factors to be considered by the Commission.

Submissions by Objector Orebo Pty Pty Ltd

- 48 On 18 May 2011 the objector, Orebo Pty Ltd, lodged:
- Objectors submissions;
 - Statement of Robert Cook;
 - Statement of Robert Harper;
 - Statement of Chris Peos;
 - 63 survey responses (1 without identification).
- 49 In addition Orebo Pty Ltd, the licensee of Moondyne Joes Bar and Bistro, 69-73 Wray Avenue, Fremantle, made oral submissions. The submissions by Orebo Pty Ltd may be summarised as follows:
- 49.1 The objector's grounds of objection were detailed and thorough and were recorded under the following headings:

Ground 1

- Should the application be granted it would likely cause undue harm or ill-health to people or a group of people due to the use of liquor (section 74(5)(b)).
- The objector cited, amongst other matters, the Australian Bureau of Statistics 2006 Census Quick Stats – Fremantle (c) – Inner (“The ABS Statistics for Fremantle Inner”) and submitted that those statistics showed that the granting of the application will increase the concentration of licensed premises in the locality and given there is a high level of alcohol related harm in the locality, the grant of an additional licence has the potential to result in an unacceptable increase in such levels.

Ground 2

- The grant of the application is not in the public interest. The particulars under this ground included “Requirement of Consumers” and stated amongst other things that the applicant’s proposed premises will not provide any facility which is not currently being provided by existing licensed premises situated within the locality and that the requirements of consumers living, resorting to or passing through the affected area for liquor and related services is presently met by existing licensed premises.
- The particulars also included “Harm or Ill-health” and in this connection referred to and relied on Ground 1 above.

Ground 3

- If the application were granted, undue offence, annoyance, disturbance and inconvenience to persons who reside or work in the vicinity would be likely to occur.
- The particulars included a submission that the granting of the application and resulting increase in the availability of liquor in the locality will negatively impact upon the amenity of the area due to increased noise, antisocial behaviour and crime in the locality.
- The grounds 1 and 2 were referred to and relied upon.

Ground 4

- Should the application be granted the amenity, quiet or good order of the locality in which the premises is situated would be lessened.
- The particulars in Grounds 1, 2 and 3 were referred to and relied upon.
- Currently within the locality there are 37 existing liquor licences capable of selling packaged liquor, including 15 hotel/tavern licences, 8 of which have a dedicated packaged liquor facility, and 8 liquor stores.
- In relation to the issue of harm and ill-health the objector referred to and relied on the intervention of the EDPH and the material cited in that intervention.
- Refusal of the application would be consistent with the primary object of the Act, section 5(1)(b) namely to minimise harm or ill-health due to the use of liquor, but a conflict arises between that primary object and the primary object contained in section 5(1)(c) namely to cater for the requirements for consumers of liquor and related services.
- When considering these competing objects it is relevant to consider the existing packaged liquor outlets in the locality.
- Consumers are well catered for by existing packaged liquor outlets, there is a high risk of harm or ill-health occurring if the present application is granted; the risk of such harm or ill-health outweighs the need to achieve the object contained in section 5(1)(c).

Submission by Objector Mr. Peter Staiger

- 50 The grounds of this objection indicate that the objector is primarily concerned with the business competition factor.
- 51 The objector submitted that allowing a company the size of Woolworths to build a liquor store 10 times the size of the family run, locally owned liquor store only 300 metres away will not only cripple that business but many of the other 37 liquor outlets in close proximity.

Determination

- 52 Pursuant to section 38(2) of the Act an application for the grant of a liquor store licence must satisfy the licensing authority that granting the application is in the public interest.
- 53 In discharging the onus under section 38(2) of the Act all applicants must address both the positive and negative impacts that the grant of the application will have on the local community.
- 54 When considering the public interest, consideration of both section 5 and section 38 of the Act are relevant when making the decision - *Palace Securities v Director of Liquor Licensing (1992 7 WAR 241 per Malcolm (CJ))*.
- 55 The primary objects of the Act as set out in section 5 are:
- (a) to regulate the sale, supply and consumption of liquor;
 - (b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - (c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the state.
- 56 Section 38(4) of the Act sets out the matters that the licensing authority may have regard to in determining whether granting an application is in the public interest:
- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
 - (b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and
 - (c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
 - (d) any other prescribed matter.
- 57 Pursuant to section 33(1) of the Act the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest, the discretion being confined only by the scope and purpose of the Act (*Palace Securities supra*).
- 58 From the evidence presented the Commission is of the view that the prime matter to be considered in assessing this application is the harm and ill-health impact

(section 38(4)(a)) that the granting of this licence might have. The Commission sees no negative public interest issues in relation to the impact on the amenity (section 38(4)(b)) nor whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the proposed licensed premises (section 38(4)(c)).

59 It is important, however, to take into consideration that primary object as provided in section 5(1)(b) of the Act is to minimise harm or ill-health, not to prevent harm or ill-health absolutely.

60 Therefore, in reaching a determination the Commission must balance the primary objects of the Act and, in conjunction with section 5(1)(b), consider section 5(1)(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.

61 The Applicant has provided detailed and voluminous evidence to address the matters set out in section 38(4) of the Act and to demonstrate the benefits to the community of a grant of the Application.

62 In demonstrating that the grant of the application will cater for the requirements of consumers of liquor, the Applicant has put forward the general assertion that Dan Murphy's liquor stores have an established operating record of being popular with consumers in that the stores have:

- revolutionised the way packaged liquor is sold;
- provided accessibility to the previously unimaginable range and depth of wines and other liquor products at the shop-front;
- raised the bar and set the benchmark in the responsible retailing of liquor; and
- fostered consumer education and knowledge in liquor products.

63 In support of the general assertion in 62 above, the Applicant has provided details of a questionnaire survey which resulted in 18 responses, of which 66.7% were substantially positive towards the development proposal. This in itself can not be taken to be fully representative of the estimated 27,000 population of the locality. These survey results also need to be balanced with the results of a questionnaire survey undertaken by the objector, Orebo Pty Ltd, where 63 respondents indicated that their requirements for packaged liquor are currently being met within the locality.

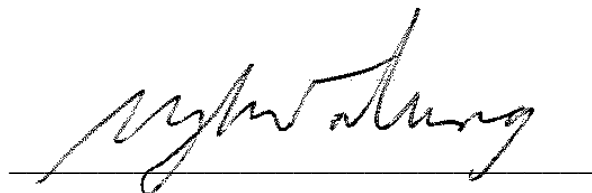
64 Evidence of consumer demand submitted in relation to the Wine Club is specific to a special interest group and also does not necessarily reflect or represent the broader requirements of the general community.

- 65 As determined in the application for a Dan Murphy's liquor store in Bicton (LC 34/2011), the Commission does not accept the general principle that because a business model has proven to be popular in other localities, that it justifies the grant of a new licence in any other locality.
- 66 The Commission does, however, accept that the Dan Murphy's liquor store business model is well managed, offers an extensive range of products and provides a high level of responsible retailing of liquor products as referred to in 62 above. Therefore, in association with the particular circumstances of the locality, particularly the absence of any other large and diversified package liquor outlet, the Commission is prepared to give some weighting to the contribution that such a facility would make in meeting the requirements of consumers, as prescribed in section 5(1)(c) of the Act.
- 67 The apparent weakness in the evidence produced by the Applicant to support the issue of public interest in granting the Application is mitigated by the particular circumstances which surround the locality in which the premises will be located.
- 68 In the circumstances of this locality where the packaged liquor outlets are primarily of a convenience store nature, many being drive-through bottle shops attached to a tavern, the Commission is persuaded that the development of a Dan Murphy's liquor store in South Fremantle, as per the application, will provide a range of products, services and facilities (as listed in 16 to 19 above), that are substantially greater than those currently available.
- 69 A major issue then is the potential for alcohol-related harm above that normally tolerated by society in the acceptance of alcohol based products as general consumer products, albeit that they are retailed under licence and regulation, through the granting of this licence.
- 70 The EDPH bases its grounds of intervention on the potential negative impacts through the granting of this licence due to liquor store size, the availability of cheap liquor and high outlet density, each considered an influence on liquor purchase and consumption, and these factors have been carefully considered by the Commission.
- 71 The Applicant proposes a liquor store of approximately 1,557m² comprising a total trading area of 1,178m² (including a "fine wine" retail area of 316m² and cool room of 81m²). This is a substantial increase in the liquor store floor space within the locality, although, of the 37 existing liquor licences, there are only two liquor stores within 1 km of the proposed site and eight within the locality comprising an estimated population of 27,000.
- 72 The Commission is not persuaded that given the circumstances of this locality that the granting of this application will result in an increase in the level of harm to an unacceptable level by being greater than that which is generally accepted in the community.

- 73 From evidence submitted by the Applicant, including data in the Data Analysis Australia Pty Ltd Report “A Study of the Balga, Albany and Mandurah Dan Murphy’s Outlets in Western Australia”, there is little to indicate any likely change (positive or negative) to levels of harm or ill-health as a consequence of the opening of those Dan Murphy’s stores. Whilst this evidence is not specific to this locality the Commission does accord it some weight.
- 74 The Commission notes that, unlike the proposed Dan Murphy’s South Fremantle, which would be a new licence, the three stores the subject of the study had previously been liquor stores that had been re-branded as Dan Murphy’s. It is not considered that this difference would have any material impact on the data application.
- 75 Therefore the Commission is unable to reach a negative conclusion based upon the evidence and material advanced by the Executive Director of Public Health as it applies to the circumstances of this application. The data presented by the EDPH does not reflect a local community experiencing any greater levels of alcohol-related harm than that which appears to be commonly accepted in the community.
- 76 The Commission accepts that as a “destination liquor store” it can be expected that purchased liquor will be consumed beyond the defined locality of 3 kilometers, which, while not adding to potential harm impacts within the locality, may still result in a wider geographic contribution of negative impacts as a consequence of alcohol consumption. However, the lack of research data relating to the spread of consumption from a destination liquor store does not allow the Commission to draw any conclusion on this aspect.
- 77 The primary object in section 5(1)(b) of the Act is to minimize harm or ill-health, not to prevent harm or ill-health absolutely. Furthermore, the statutory framework is not predicated upon the concept of prohibition, but establishes a regulatory mechanism for the granting of liquor licences and the operation of licensed premises which are in the public interest.
- 78 The Commission considered the objection lodged by Orebo Pty Ltd, however, as recorded in 75 above, is unable to reach a conclusion that the granting of this licence will result in the local community experiencing any greater levels of alcohol-related harm than that which appears to be commonly accepted in the community.
- 79 The objector’s assertion that that the consumers in the locality are well catered for by existing packaged liquor outlets, while relevant in relation to section 5(1)(c) of the Act, is none-the-less viewed by the Commission as being primarily based on commercial motives and as such has not been given a high weighting. Such an approach by the objector is not consistent with the objects of the Act and protecting market share and the commercial interests of individual licensees

should not be confused with having proper regard to the development of the liquor industry and making decisions in the public interest.

- 80 The objection lodged by Mr. Peter Staiger, the operator of a liquor store within the locality, is based solely on a business competitive basis and as such has failed to establish the grounds of objection as required under section 73(10) of the Act.
- 81 In weighing the evidence the Commission is satisfied that the granting of this licence will cater for the requirements of consumers for liquor and related services in the manner and under the circumstances contemplated by the applicant at the proposed location.
- 82 In reaching this 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 Murphys store in this locality where there are no other large outlets providing a diverse range of product.
- 83 The application for the conditional grant of a liquor store licence for premises to be known as Dan Murphy's Liquor Store, situated at 256 Hampton Road South Fremantle is approved.

A handwritten signature in black ink, appearing to read 'Eddie Watling', is written over a horizontal line.

EDDIE WATLING
DEPUTY CHAIRPERSON