

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

- Applicant:** Forrest Road Liquor Pty Ltd
(represented by Mr Phil Cockman of Canford Hospitality Consultants Pty Ltd)
- Intervener:** Executive Director of Public Health
- Objectors:** Wrestpoint Nominees Pty Ltd
Ernstson Pty Ltd
Palinode Pty Ltd
(represented by Mr Stephen Butcher of Dwyer Durack Lawyers)
- Armadale Lotteries House Management Committee Inc.
- Commission:** Mr Eddie Watling (Presiding Member)
Ms Helen Cogan (Member)
Dr Eric Isaachsen (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of the decision of the Director of Liquor Licensing to refuse an application for the conditional grant of a liquor store licence.
- Premises:** Forrest Road Liquor, Shop 1 and 2, Armadale Farmers Market, 50 Forrest Road, Armadale
- Date of Determination:** 10 July 2012
(determined on papers)
- Determination:** The application is refused

Authorities referred to in the determination:

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Palace Securities Pty Ltd and Another v Director Liquor Licensing* (1991) 7 WAR 241
- *Kapinkoff Nominees Pty Ltd v Director of Liquor Licensing* [2010] WASC 345
- *Executive Director of Health v Lily Creek International Pty Ltd* [2001] WASC 258
- *Executive Director of Health v Lily Creek International Pty Ltd* [2001] WASC 410

Introduction and Background

- 1 On 12 August 2011 an application was lodged by Forrest Road Liquor Pty Ltd for the conditional grant of a liquor store licence for premises to trade as Forrest Road Liquor at Shop 1 and 2, Armadale Farmers Market, 50 Forrest Road Armadale.
- 2 On 11 October 2011 objections were lodged with the Director of Liquor Licensing (“the Director”) from the following entities:
 - 2.1 Wrestpoint Nominees Pty Ltd – licensee of Armadale Tavern;
 - 2.2 Ernston Pty Ltd – licensee of Ye Olde Narrogin Inn; and
 - 2.3 Palinode Pty Ltd – licensee of Westfield Tavern;
the foregoing being referred to as “the licensee objectors”; and
 - 2.4 Armadale Lotteries House Management Committee Inc.
- 3 On 27 October 2011 a notice of intervention was lodged by the Delegate of the Executive Director of Public Health (“EDPH”) for the purpose of making representations. Leave had been granted for late lodgement.
- 4 On 13 February 2012 the Director by decision number A219918 refused the application.
- 5 On 12 March 2012 the applicant lodged an application for review of the Director’s decision.

Submissions on behalf of the applicant

- 6 Documents lodged by the applicant with or in relation to the application included:
 - 6.1 public interest assessment and public interest assessment executive summary (together the “PIA”) with attachments;
 - 6.2 House Management Plan, House Management Policy and Code of Conduct; and
 - 6.3 section 40 certificate of the local planning authority.
- 7 The applicant made written submissions:
 - 7.1 in the PIA lodged with the application;
 - 7.2 in the ‘Response to Intervention by the EDPH’ dated 19 January 2012;
 - 7.3 in the response to the licensee objections and the objection lodged by Armadale Lotteries House Management Committee Inc, dated 19 January 2012;
 - 7.4 in the closing comments in relation to the EDPH intervention, dated 25 January 2012;

7.5 in the closing comments in relation to the licensee objections, dated 30 January 2012;

7.6 in the further submissions by way of email, dated 1 February 2012 [3:27pm].

8 The content of the applicant's submissions may be summarised as follows:

- The applicant seeks to open Forrest Road Liquor at Shop 1 and 2, Armadale Farmers Market, 50 Forrest Road, Armadale.
- The proposed liquor store will provide a convenient one stop shopping service in conjunction with the Forrest Road Fresh supermarket as well as a full in car drive through service on the increasingly important Forrest Road.
- The applicant gave details of the locality in which the proposed store will be situated – the locality for these purposes is within a radius of 3km from the proposed store. The 3km radius is estimated to take in the suburbs of Armadale, Mt Nasura, Bedforddale, Mt Richon, Wungong, Brookdale, Haynes, Hilbert, Seville Grove and Kelmscott.
- The applicant made reference to the expected strong growth in the population of the locality in particular the areas in the west of the Armadale Local Government Area ("ALGA"), like Haynes and Hilbert, which fall within the locality and are considered 'greenfield' sites which will experience substantial and rapid population growth in the very near future.
- Forrest Road is the main artery between the centre of Armadale City and the various transport hubs for the area and these two growth suburbs (Haynes and Hilbert). The proposed store is very conveniently located on the homeward bound side of Forrest Road and is perfectly situated to service the packaged liquor requirements of the growing communities.
- The applicant addressed the demographics of the locality with reference to a table showing the changes in the ALGA between 2001 and 2006 and submitted in effect that the table showed significant positive outcomes and trends, in particular the shift in median age, employment and unemployment data and housing. This showed a picture of a locality in transition, and evidenced an expansion both in terms of population and development – such expansion bringing with it an increase in demand for liquor and related services and the number of liquor licences has not kept pace with this expansion.
- The applicant addressed the issue of the socio-economic status of the City of Armadale by reference to the Socio-economic Indexes for Areas (SEIFA) compiled by the Australian Bureau of Statistics. High scores on the Index of Relative Socio-economic Disadvantage occur when an area has few families of low income and few people with little training and in unskilled occupations. The City of Armadale scored 7 on the index – the highest 10% of areas having a decile number of 10.
- The applicant addressed the issue of outlet density in the locality – a table listed the outlets within a 3km radius of the proposed store which may sell liquor to the public for consumption off the premises. There are 8 such outlets.

- The applicant submitted that in relation to the 8 outlets:
 - two are located well to the north of Armadale Road and the other six are all located within the city centre. There is no convenient local option for the growing population to the west of the locality. This is precisely what this proposed liquor store will offer.
 - There are only two premises in the locality that offer a drive through service – both have problems.
 - Three are located inside shopping centres and one of them is a specialist cleanskin wine operation.
 - None combine a large liquor store with a convenient in-car service.
 - The applicant compared the number of licensed premises permitted to sell packaged liquor with the number that were present in the locality in 2002. The population of the City of Armadale has grown substantially over that time period and such growth will have brought with it very strong growth in demand for liquor and related services and for packaged liquor outlets. Yet only one very small specialised outlet has opened its doors within that time and one tavern licence has closed its doors. It can be seen that by this measure the local population is very much under serviced in terms of packaged liquor outlets.
 - In March 2011 the applicant compared the number of liquor licences per capital for the locality against other suburbs. It was pointed out that the locality has a very high figure for population per packaged liquor facility in comparison to the other 6 suburbs in the study.
 - The applicant submitted that the concept of a one stop shop service will enhance the shopping experience for the local community and that the following attributes and features of the proposed store make it different from the other existing packaged liquor outlets in the locality:
 - easy vehicle parking and pedestrian access;
 - full in-car service for people with disabilities, elderly and/or frail people;
 - largest shop area providing good disabled access in store;
 - ample and designated liquor store parking;
 - free local delivery;
 - complete and comprehensive range of products;
 - regularly trained and uniformed staff with good product knowledge;
 - large range of value added products.
- 8.1 In relation to section 38(4)(a) of the *Liquor Control Act 1988* (“the Act”) it was submitted that the locality has a low rate of reported alcohol related

offences as compared to the average figure for Perth. An extract from the document *“Impact of Alcohol on the Population of Western Australia”* prepared on the South Metro Region by the Drug and Alcohol Office also states *“The rates of alcohol-related hospitalisations for both males and females in Armadale for the period between 2002-2006 were similar to corresponding state rates”*.

8.2 In relation to section 34(4)(b) of the Act – the supermarket and proposed store will benefit the amenity of the locality through providing a range of convenient services. The local Council found the proposed site store would not negatively impact the locality in general, and the neighbouring properties in particular, and after close analysis and careful consideration the applicant believes that the proposed store in conjunction with the supermarket will add very positively to the local amenity.

8.3 In relation to section 38(4)(c) of the Act:

- the Forrest Road Farmers Market has been approved by the City of Armadale as a retail centre;
- the applicant has been through an extensive process with the City of Armadale Development Services Committee and has made adjustments to its liquor store and drive through layout to ensure that the proposed store does not adversely impact neighbours and others in the locality;
- the proposed store is well positioned to be conveniently located for its customer base but at the same time to minimise any potential for noise related issues.

8.4 The applicant has provided 229 witness petitions and 28 witness questionnaires collected from a representative selection of people who live, work, visit or otherwise resort to Armadale. Of the 229 petitions, 228 are supportive and one negative.

9 The applicant submitted in relation to the intervention by the EDPH:

9.1 if the notice of intervention was accepted at face value it would lead to the conclusion that the locality is full of people with alcohol related issues, or is over represented by such people but this is very far from the truth;

9.2 in reality the locality experiences no more harm or ill-health than what appears to be commonly accepted in other parts of Perth and the wider state;

9.3 with reference to figures quoted by the EDPH and alcohol and police research it can be concluded that Armadale experiences a level of harm no higher than and probably lower than, that which appears to be accepted in other localities in WA and it can also be concluded that the vast majority of alcohol related offences, incidents and “client episodes” are caused by just a few poorly managed on-premises licensed venues, not liquor stores.

9.4 in relation to the specifics of the EDPH notice of intervention, the applicant submitted the following:

- i queried the comments of local service providers, solicited by officers at the EDPH, as none of them lodged an objection and also queried the manner in which the information was gathered;
- ii some of the evidence presented is anecdotal;
- iii in relation to the EDPH reference to the Wine Box, Nedlands application, this is incorrectly used – the true situation is that the Liquor Commission (“the Commission”) found that a liquor store in a grocery outlet can be considered at the passive end of liquor licence approvals – notwithstanding the particular location;
- iv in relation to the EDPH’s comments about the SEIFA scores for the locality, Armadale is changing and applications have been granted in localities with lower SEIFA scores;
- v in relation to the EDPH submissions concerning alcohol related harm in the locality, the applicant submitted that the figures presented by the EDPH clearly demonstrate that drugs are the far bigger issue in the locality, and disputes the EDPH’s conclusions from police data;
- vi in relation to the EDPH’s comments on packaged liquor availability in Armadale and harm, the applicant submitted:
 - that whether or not there are sufficient packaged liquor outlets in the locality and whether or not the locality can sustain another packaged liquor outlet, have been consistently found by the Director and the Commission not to be valid grounds of objection;
 - there can be no valid comparison between this application and the refusal of the application for a liquor store in Lesmurdie;
 - Armadale does attract people from outside the locality.
- vii The applicant submitted that nothing in the EDPH’s notice of intervention has disputed the contents of the applicant’s PIA.

9.5 In its “closing comments in relation to Notice of Intervention by the EDPH” the applicant:

9.5.1 referred to the then *Minister’s Second Reading speech (2006)*, and also to the government’s response to the Education and Health Standing Committee’s final report entitled “*Alcohol: Reducing the Harm and Curbing the Culture of Excess*” (*Report No 10 in the 38th Parliament, 2011*); and

9.5.2 submitted that the members of the local community should be allowed a safe and convenient drive through liquor store as an

alternative to the existing packaged liquor store outlets which are mostly congregated in the city centre and do not offer a proper and convenient one stop shopping opportunity.

9.6 In two further submissions each dated 1 February 2012 the applicant stated:

- the EDPH's closing submission dated 30 January 2012 makes very strong statements about the applicant and casts the applicant, in the applicant's opinion, in an unfair light which might lead to an incorrect conclusion of the applicant's motive, experience and capabilities;
- on reading the personal statements of Mr Chris Ring and Mr Wayne Evans (lodged with the application) it is hard to conclude, as the EDPH does, that the applicant "has dismissed the concerns" raised by EDPH. Instead it becomes very apparent that the applicant sees that it is only through a truly collaborative approach of licensees, local stake holders, the police, local authorities and the licensing authority that effective harm minimisation is possible;

9.7 the applicant's directors have vast experience in the industry and no evidence has been presented by anyone, in this application, to suggest that they are anything but responsible and very effective managers of licensed premises;

9.8 reference was made to the favourable comments made by some responders to the questionnaires submitted with the application as to the experience and competence of the applicant;

9.9 reference was made to the following statement of Mr Chris Ring:

"none of the comments or arguments contained in our submissions are intended to dismiss the levels of alcohol related harm and ill health which currently exist in Armadale, or the related concerns of the local service providers. Indeed we believe our submissions demonstrate an understanding of the potential for such harm or ill health in this (or any other) locality and of the need to effectively manage those risks. We are very experienced in the liquor industry and take our obligations regarding the responsible service of alcohol very seriously. As part of this commitment we are willing to work with each of the service providers nominated by the EDPH to assist them to meet their objectives."

10 In response to the licensee objection the applicant submitted:

10.1 the licensee objectors all hold hotel or tavern licences- none of the other licensees in the locality have sought to object to the application;

10.2 it is difficult to conclude that they are motivated by the public interest and far easier to conclude that they are motivated by a desire to prevent a new liquor store opening and to protect their turf;

10.3 the licensee objectors quote some demographic information on page 2 of the notice of objection. However there is a far more comprehensive study of the locality's demographics contained in the PIA and none of this has been disputed by the licensee objectors;

- 10.4 the licensee objectors state the applicant claimed that there is no longer any alcohol related harm in the locality – this is not true, the applicant never claimed this and states that there is alcohol related harm and ill health in every single locality in WA and it is impossible to completely eradicate it and this has been recognised consistently by the Director and the Commission. The evidence presented by the applicant showed that the locality in which it is proposed to put the proposed store suffers a level of harm no higher than that which appears to be accepted in other parts of the state;
- 10.5 the licensee objectors at paragraph 22 of the notice of objection state that it is a “given” that “there is a high level of alcohol related harm” within the locality and yet produce no evidence to substantiate this.
- 11 In its response to the objection lodged by the Armadale Lotteries House Management Committee Inc (“ALHC”) the applicant submitted:
- 11.1 much of the objection is taken up with an argument against alcohol in general with nothing specific to the proposed store or its operator;
- 11.2 none of the agencies which are tenants of the ALHC lodged an objection to the application;
- 11.3 none of the seven schools located within 5 kilometres of the proposed store, or the eight childcare centres in the locality, referred to by ALHC have objected to the application;
- 11.4 the applicant refuted the submissions by ALHC that:
- 11.4.1 ease of access through in car delivery increases the chances of driving offences through drink driving;
- 11.4.2 the proposed store will be detrimental to the prospects for those people with alcohol dependency issues;
- 11.4.3 the figure provided by ALHC for the number of assaults in the locality which were “alcohol related”;
- 11.4.4 the ALHC’s “insinuation” that the provision of security cameras and surveillance proposed by the applicant is an “aggressive” measure and that it will “attract anti-social and aggressive behaviour” has no basis and is contrary to the Director’s policy.

Submissions on behalf of the licensee objectors

- 12 The grounds for the objection by the licensee objectors are:

Ground 1

- 12.1 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 75(5)(b)).**

Submissions made reference to and where relevant annexed:

- ABS Statistics for Armadale (postcode 6112);
- extract from the Armadale Health District Population and Health Profile 2005;
- extracts from the City of Armadale Community Safety Plan for 2005-10 (“the Crime Profile”);
- extracts from the Drug and Alcohol Inter-agency Strategic Framework for Western Australia 2011-2015 published by the Department of Health (“the Framework”);
- summary of the feasibility study “Predicting Alcohol Related Harm from Licensed Outlet Density”;

and it was further submitted that:

- young people, families, aboriginals and persons in low socio-economic areas have all been identified as “at risk” groups under the Western Australian Drug and Alcohol Strategy 2005-2009;
- Armadale Youth Resources have been active in combating the abuse of liquor by youths within Armadale through the creation of “Drug Arm WA Inc.”, offering a range of community support programs;
- the granting of the application will increase the concentration of licensed premises in the locality;
- given that at present there is a high level of alcohol related harm occurring within the locality, the grant of an additional licence has the potential to result in an unacceptable increase in such levels.

Ground 2

12.2 The grant of the application is not in the public interest.

Submissions made reference to and where relevant annexed:

- section 33 and section 5(1)(c) of the Act;
- a locality map for the location of the proposed store together with the locations of existing packaged liquor outlets;
- the proposed premises will not provide any facility which is not currently being provided by existing licensed premises situated within the locality;
- in relation to harm and ill-health the objectors rely on ground one.

Ground 3

12.3 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.

Submissions made reference to:

- the granting of the application and the resulting increase in the availability of liquor in the locality will negatively impact upon the amenity of the area due to increased noise, anti-social behaviour and crime within the locality;
- In relation to this ground the objectors rely on grounds one and two.

Ground 4

12.4 Should the application be granted, the amenity, quiet or good order of the locality in which the premises is situated would be lessened.

In relation to this ground, the objectors relied on grounds one, two and three.

13 In further submissions the licensee objectors:

13.1 made legal submissions;

13.2 provided a statement dated 19 February 2012 by Roy Williams, an approved manager at the Armadale Tavern located at 229 Jull Street, Armadale which referred to the following:

- the locality is well catered for and has reached saturation point in relation to the facilities supplying packaged liquor;
- the applicant has produced evidence that there is a need for a further packaged liquor outlet to service the needs of the locality but this is contradicted by the evidence produced by the objectors in the form of the questionnaires attached to the statement of Roy Williams. The questionnaires evidence that there is not a sufficient consumer requirement for another liquor store in the locality.

13.3 In relation to the issue of harm or ill-health the objectors refer to and rely on the EDPH intervention which details:

- both national and international studies that have demonstrated the positive relationship between the availability of alcohol and the level of consumption and associated harm or ill-health; and
- existing harm and ill-health to consumers within the locality.

13.4 Reference was made to the publication entitled '*Predicting Alcohol related harms from Licensed Outlet Density: A Feasibility Study*' monographed series number 28.

13.5 The grant of the application will result in harm or ill health occurring due to the use of alcohol.

13.6 If the evidence supports a finding that consumer requirements are presently being satisfied, any increase in harm or ill-health must necessarily be fatal to the application.

13.7 The questionnaires (attached to the statement of Roy Williams) demonstrate that consumers throughout the locality, including that portion targeted by the applicant, are well catered for by existing licensed premises.

13.8 When this evidence of consumer satisfaction is objectively considered the risk of harm or ill health by the grant of the application outweighs the need to achieve the objective contained within section 5(1)(c) of the Act.

Submissions on behalf of Armadale Lotteries House Management Committee Inc

14 The grounds for the objection were:

14.1 The proposed store could cause undue harm or ill-health to both the youth of the local area and the residents of the area.

14.2 Armadale Lotteries House is 600 metres from the proposed store.

14.3 Tenants of the building include:

- A-K Mobile Meals;
- Armadale Youth Resources;
- CLAN WA Inc;
- Directions Family Support Association Inc;
- Southern Districts Support Association Inc; and
- Wanslea Family Services.

All of these agencies are not for profit organisations which assist the marginalised and disadvantaged people in the community, particularly the aged, disabled, people with mental health issues, socio economically disadvantaged families and young people.

14.4 The proposed store will actively target these clients by reason of proximity, excessive opening hours and aggressive marketing, through an emphasis on convenience, attachment to general shopping outlets and cheaper products.

14.5 Armadale's SEIFA index score is 886 with the average socio economic score being 1000.

14.6 Armadale Lotteries House has a skate park in its grounds – less than 1 kilometre from the proposed store, where underage drinking and anti-social behaviour are already a problem with staff having to remove empty alcohol containers and other potentially dangerous material on a daily basis.

14.7 The close proximity of the proposed store will aggravate this already significant social problem as well as provide a “gateway” for young people to be exposed to underage and secondary supply of alcohol.

- 14.8 By developing the proposed store youth will begin to further internalise the social acceptability of alcohol thus increasing their chances of engaging in anti-social behaviour in relation to alcohol.
- 14.9 Alcohol related issues concerning the youth of Armadale consist of binge drinking, secondary supply and criminal offences of assault and theft due to the close proximity of schools with 7 being within 5 kilometres of the proposed store.
- 14.10 Local residents are at risk of harm due to the opening times being 9am to 10pm Monday to Saturday and 10am to 7pm on Sunday – these hours are well past the opening hours of Forrest Road Fresh (8am to 7pm). Not only does this defeat the proposed convenience of making grocery shopping and alcohol purchases together, but it also puts the surrounding residents at risk of increased traffic, potential burglary and public drunkenness.
- 14.11 The ease of access through in-car delivery increases the chances of driving offences especially due to the late opening hours.
- 14.12 The location of the proposed store being on a major access route means that any disturbances, security issues or potential underage customers will affect many people in the residential area.
- 14.13 Tenants at Armadale Lotteries House endeavour to provide the disadvantaged of the community with the needs required to increase and maintain their standards of living and quality of life. The proposed store is detrimental to the transformations being administered to people suffering with alcohol addiction or mental health issues which may be triggered or amplified by alcohol access and consumption.
- 14.14 The proposed store has the potential to increase the rate of alcohol related assaults in the local area, potentially increasing the chances of harm or ill health being caused to residents.
- 14.15 From 2007 to 2008, 29.5% of assaults in Armadale were alcohol related. Residential locations and major streets like Forrest Road also account for greater alcohol related homicides according to the study carried out of by the Office of Crime Prevention.
- 14.16 Most alcohol related assaults occurred between 9pm and 3am on Friday and Saturday nights, thus there is a very high chance that the late opening hours of the proposed store could highly contribute to alcohol-related assaults in Armadale leading to undue harm to local residents.
- 14.17 The proposed liquor outlet could cause undue offence or disturbance in the local area to schools, child care centres and places of worship all within a 2.5 kilometre radius of the proposed store. The objector named 7 schools and 8 child care centres.
- 14.18 Sporting complexes were named as being at risk of being disrupted due to the close proximity of the proposed store to the complexes.

14.19 The proposed store is not in the public interest for the following reasons:

- it has the potential to increase the already high amount of risky/high risk alcohol consumption inducing long term risks in Armadale which currently stands at 39.4% and short term alcohol risk being 17%. Alcohol caused 1685 hospitalisations in Armadale from 2005-2009 and such social issues could increase due to the locality and accessibility of alcohol from this new outlet, especially due to the in car and at home delivery from the proposed store, and the fact that it will be in a residential area;
- Armadale residents have the highest proportion of drinkers who consumed alcohol at both high and low risk levels and this could be encouraged and stimulated by the opening of the proposed store;
- Armadale has the highest proportion of people who drink at both long term risk levels and short term risk levels. The Western Australian average for long term risk is 48.6% and that for Armadale residents is 51.4%. The Western Australian average for short term risk is 21.9% compared with 28.1% of Armadale residents;
- with the two major Armadale shopping complexes being 2.5 kilometres from the proposed store, it is highly accessible to both targeted demographics and unintentional patrons, and increases the chances of developing an environment which is antisocial and uninhabitable; and
- the proposed store will not be in the interest of the public as it will only increase accessibility of alcohol to the surrounding residents, as well as those using the Armadale train line which is 2 kilometres from the proposed outlet.

Submissions on behalf of the Executive Director of Public Health

- 15 On the grounds of minimising harm or ill-health to people, or any group of people due to the consumption of liquor the purpose of the intervention is to make representations regarding the harm and ill-health risks associated with this application for a liquor store licence.
- 16 High risk aspects of the application include:
- 16.1 there are “at risk” groups who reside in and frequent the locality;
- 16.2 the location of the proposed store will provide convenience to “at risk” groups – of particular concern is the potential for impulse/opportunistic buying by these groups as a result of the prominent location of the proposed store;
- 16.3 low socio-economic status of the locality – when considering Armadale in the context of the metropolitan area it is clear that the locality is one of the most socio-economically disadvantaged statistical local areas. Reference

made to a table “Index of Socio-economic Disadvantages: Greater Perth Statistical Local Areas 2006” which shows that the statistical local area of Armadale is ranked third amongst the most disadvantaged areas in Perth. The socio-economic status of Armadale should be taken into consideration given that the granting of the application will increase the availability of liquor in the locality;

16.4 the proposed store will increase the physical availability of alcohol to “at risk” groups in the locality – responsible service measures on site will not sufficiently mitigate the potential for harm. Harm that occurs away from licensed premises is a relevant harm or ill health consideration;

16.5 in relation to children, young people and families in the locality (nominated in the Director’s policy in respect to the Public Interest Assessment as ‘at risk’ groups) the City of Armadale’s Community Profile states amongst other matters:

“the City of Armadale has a relatively young population, with a high proportion of children and young people as compared to the State and Perth metropolitan average ...”

16.6 within the 3 kilometre locality of the proposed store there are nine primary schools, two secondary schools, two combined primary schools and a trades college catering for year 11 and 12 students;

16.7 aboriginal persons are identified in the Director’s Public Interest Assessment Policy as a “group at risk of alcohol related harm” – it is therefore relevant to identify that at Census 2006, indigenous persons comprised 2.8% of the Armadale population, a higher proportion than the 2% in the South East Metropolitan Statistical Sub Division (SSD) (almost half of Armadale’s indigenous population was under 18 years of age (49.6%) higher than in the South East Metropolitan SSD (44.9%) and Western Australia (43.7)%);

16.8 information provided by social service providers in the locality support the above statistics and other representations made in this notice of intervention show:

- there are at-risk groups in the area, including: those that are already experiencing harm related to alcohol use; those in lower socio-economic circumstances; and children and young people;
- there are social services located in the area which support responses to harmful alcohol use and related negative consequences;
- there is already public drinking of packaged liquor and alcohol related harm occurring in the immediate locality;
- the availability of alcohol that the proposed store will offer by way of location and accessibility will contribute to an increased vulnerability

of the at risk groups both directly and indirectly. In turn, this increases the likelihood that harm and ill health will occur.

17 The EDPH submitted a summary of experiences and concerns of local social service providers in the Armadale locality as follows:

- ABC Development Learning Centre located at 82 Forrest Road, Armadale, which provides long day-care to children aged from 6 weeks to 5 years, 5 days a week. The child care centre is located approximately 270 metres from the proposed store;
- Drug ARM WA Inc located at 56 Fourth Avenue, Armadale is approximately 1 kilometre from the proposed store, and provides support services to people affected by alcohol and drugs;
- Armadale Gosnells and Districts Youth Resource Inc – located at 122 Forrest Road, Armadale, approximately 700 metres from the proposed store, works with state and local governments, schools and community groups to provide appropriate services for young people aged 10-18 years including educational programs, youth counselling, family support, school holiday programs, young women’s programs and youth music programs;
- Parkerville Children and Youth Care Inc is located at the George Jones Advocacy Centre, 2 Wungong Road, Armadale, approximately 750 metres from the proposed store. Services provided include:
 - a youth crisis accommodation service;
 - a therapeutic care program providing medium and long term foster care to children referred from the Department of Child Protection;
 - family support services and counselling (not alcohol related counselling);
 - a point of contact for children who have suffered trauma from abuse and their families;
 - programs for families and at risk students in Armadale schools including social education and development of protective behaviours;
 - Young (16-25 year olds) women’s accommodation located at Sixth Road, Armadale – for up to 12 young women and their children.
- Armadale Youth Accommodation Service located at 317 Railway Avenue, Armadale, approximately 1.9 kilometres from the proposed store and provides short term crisis accommodation for ‘at risk’ or ‘homeless’ young people from 15 to 20 years; and
- Magic Moon Childcare Centre located at 101 Forrest Road, Armadale which provides long day care to children from 0-5 years Monday to Friday and which is approximately 500 metres from the proposed store.

- 18 the concerns of the service providers in relation to the proposed store can be summarised briefly as being the possibility of:
- more harm due to more readily available liquor; and
 - temptation, through location and access, to individuals with existing alcohol issues.
- 19 Statistics show that alcohol is currently a strong feature of offences in Armadale including assault, domestic violence and drink driving and alcohol-motivated crime.
- 20 In relation to outlet density it is submitted that the proposed store will increase the risk of harm to the community, given the close proximity to the existing liquor outlets, the existing levels of harm occurring in the community and the presence of 'at risk' groups in the locality.
- 21 In correspondence dated 17 January 2012 the EDPH maintained its submissions made in the earlier notice of intervention.
- 22 In its letter dated 30 January 2012, the EDPH stated that the closing comments were submitted in response to the applicant's further submissions and were as follows:
- The EDPH recognises the applicant's right to critique representations made but noted with concern that within the applicant's further submissions there is little positive acknowledgement of the experience of local stakeholders responding to alcohol related harm and at risk groups in Armadale nor is there any constructive response to those concerns offered. Reference was made to the Director's guideline on the Public Interest Assessment in relation to liquor store licences.
 - Reference was made to the applicant's submission concerning:
 - levels of alcohol related harm in the locality and in this connection referred to the figures quoted in previous submissions by the EDPH in relation to the number of alcohol related assault offences;
 - submissions in relation to 'not all licensed premises are the same';
 - concerns from local service providers – the EDPH made submissions in relation to the methodology involved in obtaining details of such concerns and addressed matters raised by the applicant "refuting" the submissions originally made by the EDPH concerning at risk groups residing in the locality, packaged liquor availability in the locality and outlet density in the locality.
- 23 The concluding comments in the EDPH submission were:-
- "Armadale is currently experiencing a measurable amount of alcohol related harm, including:*

- According to SEIFA the Armadale SLA is third most disadvantaged in comparison with Perth SLA;
- in the past three years, nearly one in four assaults in the suburb of Armadale have been alcohol related;
- in the past three years one in every 2.5 domestic violence offences was recorded as being alcohol related;
- 70% of drink driving charges recording with Armadale as the drinking suburb were linked to consumption of alcohol at private premises;
- for clients engaged in treatment services with the local Community Drug Service Team, data shows alcohol is the primary drug of concern;
- for clients engaged in treatment services from Armadale, client episodes relating to alcohol use have been steadily increasing between 2008 and 2011 (from N =75 to n=132)".

Determination

- 24 The Commission is bound by the principle established in *Hancock v Executive Director of Public Health (2008) WASC 224* that in conducting a review under section 25 of the Act it is not constrained by a finding of error by the Director but is to undertake a full review of the material before the Director and make its own determination based on that review.
- 25 By operation of section 33(1) of the Act the Commission has 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 considered by *Malcolm CJ in Palace Securities Pty Ltd and Another v Director Liquor Licensing (1991) 7 WAR 241* who said it was confined by the scope and subject of the Act and was not arbitrary and unlimited.
- 26 The Director has identified the materials that were before him when making the decision and provided these materials to the Commission as required by the principle set out in *Kapinkoff Nominees Pty Ltd v Director of Liquor Licensing (2010) WASC 345* and section 25(2)(c) of the Act.
- 27 Pursuant to section 38(2) of the Act the onus is on the applicant to satisfy the Commission that the application is in the public interest. Section 38(4) provides an inclusive definition of the public interest and it is an area of law that has been extensively litigated and the Commission takes notice of and applies the following principles from the case law:
- It is of wide import and not exclusively defined by the Act;
 - the proper meaning is taken from the subject matter and the legislative framework;
 - it imports a value judgment confined by the subject matter and the scope and purpose of the Act;

- it is a balancing and weighing exercise between the private interests of the individual and the public good;
 - it is for the decision maker to determine what is relevant and what weight is given to these matters.
- 28 The applicant expressed in its conclusion that based on the information provided in the PIA the public interest will in all respects be properly served.
- 29 Considerable attention has been directed in the review application, and in the PIA, to the demographics, to the population size and to traffic flow – as well as to the anticipated changes in each of these 3 aspects. The submission by the applicant was that these were proof that the proposed liquor store is in the public interest. These three elements would certainly be markers that the community was in a growth phase. However, the Commission does not consider that the growth is, by itself, evidence that the proposed liquor store will serve the public interest.
- 30 The applicant made submissions as to the adequacy of existing packaged liquor suppliers, and provided a witness petition with 229 signatures and 28 witness questionnaires. Commentary by the applicant was also provided on the objectors' questionnaires. It was not evident on examination of either questionnaire as to where or how the respondents were selected, or what verbal comments or instructions (if any) were given.
- 31 Interestingly, the Commission further notes that the respondents to each of the questionnaires, cited “close proximity / price / convenience / ease” as to why they selected either their current package liquor outlet, or why they would patronise a new packaged liquor outlet. When considering all the variables, the Commission had some difficulty in assessing how much weight to place on the responses to either questionnaire.
- 32 The submissions as to the extensive and unblemished experience of the applicant were considered by the Commission. Although effective management of packaged liquor outlets may be a component of addressing the health issues in relation to alcohol, it has however limited application to such components as outlet density, secondary supply, and harm that occurs in the home or place of consumption.
- 33 The specific grounds of intervention by the EDPH were :
- there are at-risk groups who reside in and frequent the locality;
 - the potential impact of this application on at-risk groups in the locality;
 - there are service providers in the immediate locality who support people, including youth, who are experiencing alcohol-related problems;
 - concerns have been raised by local service providers regarding the potential impact of the granting of this liquor store licence on their clients; alcohol related harm in Armadale;
 - the social demographic profile of the locality;

- outlet density concerns.
- 34 The EDPH submitted that the availability of alcohol that the proposed liquor store will offer by way of location and accessibility will contribute to an increased vulnerability of the at-risk groups, both directly and indirectly. It additionally submitted that in turn, this increases the likelihood that harm and ill-health will occur.
- 35 The applicant in its submission noted that location and accessibility are positive aspects of its proposal, however, it took issue with the proposition that its proposed store will add to the burden of alcohol related ill-health in the community. In its view, such a burden already existed and that in absolute terms the proposed facility will add little or nothing to that burden.
- 36 The Commission rejects this argument as in evaluation of the health aspects the Commission is not obliged to consider alcohol-related harm data in relative or absolute terms. As explained by *Justice Ipp in Executive Director of Health v Lily Creek International Pty Ltd (2001) WASCA 258*:
- “... the public interest considerations of harm or ill-health that underlies 5(1)(b) indicate that the potential of harm or ill-health is to be taken into account irrespective of whether the prospect of harm or ill-health is a possibility or a probability. The wording of s 69(8a) is also indicative of an intent to this effect.”*
- 37 There was considerable information from local service providers and organisations as to the current levels of alcohol related problems in the locality, notwithstanding that some of the individuals accessing the services live outside the locality. Attention was directed to the presence of at-risk groups in the demographic information available from the Australian Bureau of Statistics.
- 38 These at-risk groups include children and young adults, aboriginal people and communities, families and people in low socio-economic areas. The City of Armadale has a high proportion of children and young people compared with State and Perth Metropolitan averages; a higher proportion of indigenous persons than the South East Metropolitan State Statistical Division and, in the context of the metropolitan area, is one of the most socio-economically disadvantaged statistical local areas.
- 39 The Commission has given considerable weight to the EDPH position, with supporting evidence, that there is certainly the possibility of an adverse impact on the social services in the locality, through increasing the convenience (including the drive through service) and availability of alcohol within the vicinity of these services.
- 40 An objection was received from 3 licensees based on four grounds as listed at paragraph 12 above. When considering objections from established licensees, the Commission is mindful of the competition factors which exist and may therefore not place a high weighting on the arguments submitted as private interests. Private interest must not be confused with public interest.
- 41 The objection lodged by the Armadale Lotteries House Management Committee Inc was based on the potential increase in harm and ill-health and undue offence

or disturbance to persons, particularly youth, in the area, as a consequence of the granting of the licence. Considerable reference was made to the community service agencies in the locality and the potential impact that the granting of the licence would have on their operations and on those they assist.

- 42 The objection provides a consistent view to that of EDPH intervention and was considered by the Commission alongside the EDPH intervention on the health aspects of this application. In making its decision the Commission has been mindful of section 38(2) of the Act which states:

“An applicant who makes an application to which subsection applies must satisfy the licensing authority that granting the application is in the public interest”

- 43 The central issues to be weighed and balanced are the legitimate interests of the applicant with an established record of management and the health issues associated with alcohol in the locality. The Commission records that it has no issue with the concept of providing a one stop shopping service for consumers, nor does it have any reason to question the ability of the applicant to apply management structures to minimize the potential for harm and ill-health through the sale of alcohol.

- 44 However, as explained by *Justice Wheeler* in *Executive Director of Health v Lily Creek International Pty Ltd & Anor (2001) WASCA 410* :

“ ... it is not the “risk” of harm in some abstract sense which is relevant, but rather the risk having regard to the proved circumstances of the particular area in relation to which the application is made.”

- 45 The Commission has considered the health aspects applicable to this locality and is satisfied that the material before it is indicative that there is the potential for harm to vulnerable groups. These outweigh the requirements of the consumers for liquor and related services. Accordingly, the application is refused.



EDDIE WATLING
PRESIDING MEMBER