

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: PDJ GERALDTON PTY LTD

PREMISES: CON'S LIQUOR GERALDTON

PREMISES ADDRESS: LOT 86 (73) UTAKARRA ROAD UTAKARRA

APPLICATION ID: A000129197

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 24 NOVEMBER 2015

Introduction

- 1 PDJ Geraldton Pty Ltd (the applicant) lodged an application for the conditional grant of a liquor store licence for premises to be known as Con's Liquor Geraldton and located at Lot 86, Utakararra Road, Geraldton. The application is made pursuant to s 47 and s 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Pursuant to s 74 of the Act, objections to the application were received from:
 - The Commissioner of Police
 - Ian Blayney MLA
 - Hon Paul Brown MLC
 - Kyme Rigter (Queens Supa IGA Liquor Store)
 - Colin Findlay (Utakarra Liquor Barn)
 - Nathan Tomms (Glenfield IGA Liquor Store)
 - Richard de Trafford
 - Ms Corryn Bull, Chair Rangeway, Utakararra, Karloo Progress Association
 - Bundiyarra Aboriginal Community Aboriginal Corporation
 - Geraldton Streetwork Aboriginal Corporation
 - Freerk Zuideveld
 - Donald Henry and Marie Lesley Patten

- 3 The applicant submitted that most of the objections were defective because they were not submitted in the prescribed form. Whilst this may be the case, the licensing authority should act without undue formality (refer s 16) and non-compliant objections can be heard if it is in the public interest (refer s 73(5)). The real issue is the matters raised, not whether an objection is on the correct form. Some leeway should also be given to unrepresented parties. Section 16(7) of the Act provides that the licensing authority is not bound by the rules of evidence or any practices or procedures applicable to courts of record and the authority is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. Consequently, I am of the view that it is in the public interest that the objections as presented should be permitted, except for the objections by Freerk Zuideveld and Donald and Marie Patten, which, pursuant to s 74(4), will not be heard because they raise no relevant issues.
- 4 The Executive Director Public Health (EDPH) lodged a notice of intervention pursuant to s 69 of the Act.
- 5 To ensure each party was afforded a reasonable opportunity to present its case, directions were issued on the timeframes for the lodgement of evidence and submissions to be relied upon. Some objectors lodged new evidence outside the permitted timeframes, as highlighted by the applicant in its submissions dated 24 September 2015. The objectors did not seek leave to submit this material out of time, and it has therefore been disregarded.
- 6 Pursuant to s 13 and s 16 of the Act, the application will be determined on the written material lodged. A voluminous amount of material was submitted, not all of it helpful, which is briefly summarised as follows.

The applicant's evidence and submissions

- 7 The applicant seeks to establish a large, 1200m² 'destination' packaged liquor outlet in a neighbourhood shopping centre in Utakarra, a suburb of Geraldton. It was submitted that Geraldton is the primary service centre for the mid-west region of the State, which comprises the City of Geraldton along with the local government areas of Cue, Meekatharra, Mount Magnet, Murchison, Sandstone, Yalgoo, Carnamah, Chapman Valley, Coorow, Irwin, Mingenew, Morawa, Northampton, Perenjori and Three Springs.
- 8 According to the applicant, the liquor industry in Geraldton is devoid of proper competition; it has a limited range of product on offer; and the services and facilities are poor, with the last liquor store licence being granted in 1999.
- 9 It was submitted that in 2011, Geraldton had the seventh highest recorded population growth out of Australia's 70 largest growth areas. The Commercial Activity Centres Strategy for the City of Greater Geraldton highlights the demand for large format retailing in Geraldton, which is expected to double in the next 20 years. The Strategy plan contemplates the population in the next 20 years will grow to somewhere between

50,000 and 100,000 people, with the population of Geraldton becoming more affluent, older with smaller households and less children, better educated and employed in high knowledge intensive jobs.

- 10 According to the applicant, the proposed liquor store is aimed at the broader packaged liquor market being the regional catchment area rather than just servicing patrons from the surrounding locality. The population of the City of Greater Geraldton is growing and in 2011 it was 37,158 people. The area also had 440,500 visitors per year of which 78% were from intrastate.
- 11 The applicant submitted that the proposed liquor store will provide the following services:
 - i. there will be a large on-site parking facility;
 - ii. the store will have wide aisles to accommodate trolleys and pallets. The floor area will contain the bulk of the products, and there will be different sections which display the products by region, country, variety etc;
 - iii. the product will be well displayed on modern shelving and in refrigeration cabinets;
 - iv. a purpose built liquor store, with a 'department style" floor layout, that will create facilities which are quite different to the existing liquor stores in Geraldton;
 - v. a large and diverse range of liquor, focused on wines from all over the world and locally, with an emphasis on Western Australian wines, will be available at one location (up to 4,000 different lines of products). There will be products not available at any other Western Australian packaged liquor outlets;
 - vi. competitive pricing where product cost will be well below the existing prices currently being charged in Geraldton;
 - vii. customer education programs including wine tasting, wine dinners, employees with specialist knowledge, and employees on the floor assisting customers with product selection (good value for money);
 - viii. personalised customer service provided by experienced staff with sound product knowledge, who are well trained and attend to the requirements of consumers e.g. carrying liquor products to the car, arranging home delivery etc;
 - ix. the modern design of the premises will have CCTV, staff trained in security and crowd management, adequate security and safety measures and a well lit car park;
 - x. many different lines of product will be on weekly promotion (specials) and sold at extremely keen prices; and
 - xi. regular promotions on the "specials".

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- 12 The applicant submitted a Public Interest Assessment (PIA) together with various reports, including a town planning report (the MGA Report) and an environmental and health assessment report (the Caporn Report).
- 13 The MGA Report considered the application from a town planning perspective as well as providing information on the population characteristics and traffic and amenity matters. Some of the key observations from the MGA report are:
- the proposed outlet is located in the Geraldton suburb of Utakarra. The site is strategic, being at the geographic heart of Greater Geraldton and highly accessible by regional and local traffic. Programmed road improvements confirm accessibility;
 - while geographically central, the site avoids the congestion of the CBD;
 - a comprehensive, destination style packaged liquor outlet is an amenity not currently available in the Geraldton region;
 - the population of the locality is growing, rising from 14,770 at 2006 to 15,146 at 2011. A projection of observed growth rates suggest the population will reach 15,295 by mid 2013;
 - the demographic profile of the locality's population indicate that there are particular groups which are above the State average such as low income earners, unemployed, single parent families and indigenous persons. However, there are areas within the locality which are relatively affluent. The proposed liquor store is aimed at serving a much broader, regional catchment rather than targeting the locality;
 - Utakarra Road/Eastwood Road provides a busy traffic artery and it is joined by Flores road from the North, another busy route in the context of Geraldton. In the future, road realignments will create an important intersection at the junction of Eastwood Road and Flores Road/Abraham Street, virtually adjacent to the proposed liquor store;
 - there are 10 commercial licences in the locality. The majority of these are in the Geraldton CBD while 3 are suburban. No liquor store has been granted since 1999 and none of the existing licences provides a comprehensive, large format packaged liquor service;
 - there are another 10 commercial licences in the Greater Geraldton area outside the boundaries of the locality. None of these provide a comprehensive, large format packaged liquor service;
 - Geraldton is a regional centre, which services an extensive geographical area up to 400km distance. There are no large format liquor stores within this catchment area;

- regional centres traditionally have a function of comparative shopping, however the community in Geraldton and the larger region are denied the opportunity to experience comparative liquor retail shopping in the region; and
 - the grant of the application is likely to reduce the level of leakage for comparative packaged liquor retail from the City.
- 14 According to the author of the Caporn Report, there have been significant improvements in the services and facilities in Geraldton in the past 30 years, some due to the impact of the FIFO workers who use the town facilities and other aspects arise from the 'Royalty for Regions' funding of special projects. However, the packaged liquor outlets in Geraldton have not 'modernised' and many have fallen behind the contemporary expectations of a modern consumer seeking to buy packaged liquor. The author concluded that the grant of the application will create no adverse environmental impact on residents or nearby businesses.
- 15 The applicant submitted that it is experienced in the set up and operation of large format packaged liquor outlets having established similar outlets in Balga and Bunbury, with both stores proving very popular before they were subsequently sold.
- 16 To support its application, the applicant also submitted 18 consumer questionnaires and commissioned the Patterson Research Group to undertake a community survey of adult residents in Geraldton and the satellite towns to the north and south of Geraldton. The aim of the survey was to gauge the level of support for the grant of the application, with 401 telephone surveys completed. Approximately 63% of respondents overall supported the application, while 62% of respondents from within a 3km radius of the proposed liquor store supported the application.

The objectors' submissions and evidence

The Commissioner of Police

- 17 The Commissioner of Police (the Commissioner) objected to the application on the grounds that:
- the grant of the application would not be in the public interest; and
 - the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor.
- 18 According to the Commissioner, much of the applicant's supporting documentation regarding regional growth in Geraldton is outdated and has not been adjusted to reflect the downturn in the local industry, including iron ore and the Oakajee project. Furthermore, there are at-risk groups within the locality, which is already recognised to be suffering from a significant degree of alcohol-related harm, disorder and disturbances. The proposed liquor store will be located near the Bundiyarra Aboriginal Corporation and the Geraldton Streetwork Aboriginal Corporation.

- 19 It was submitted by the Commissioner that the suburbs of Utakarra, Rangeway and Karoo, which are in close proximity to the proposed liquor store, fall in a low socio-economic category with key indicators such as median weekly incomes; percentage of Aboriginal population and unemployment being significantly disparate to the State average.
- 20 The Commissioner also provided data on the existing crime in these suburbs, which demonstrates that alcohol significantly contributes to and influences crime rates. It was submitted that the level of alcohol-related harm experienced in these suburbs is already at an unacceptable level and the introduction of a large format liquor outlet will increase the availability of alcohol which will result in greater harm in the community.
- 21 Of particular concern to the Commissioner was the existing level of domestic violence in the area. Alcohol is a common contributing factor in domestic violence and research establishes a positive relationship between the density of packaged liquor outlets and the volume of alcohol sold with increased rates of domestic violence.
- 22 In view of the profile of the local community and existing levels of alcohol-related harm, it was submitted by the Commissioner that the grant of the application was not in the public interest.

Ian Blayney MLA

- 23 It was submitted by Mr Blayney that many of the residents of Utakarra and neighbouring Rangeview come from low socio-economic backgrounds, with a high percentage of residents being of Aboriginal or Torres Strait Islander descent. The proposed liquor store will be a high volume seller of discount liquor, located adjacent to an already existing bottle shop.
- 24 The suburb of Utakarra is an area of high unemployment and low skills, where incidence of crime is high, with much of that crime relating to domestic violence and aggravated violence. This violence and other acts of anti-social and disruptive behaviour is often alcohol fuelled. The proposed liquor store will be in close proximity to the Bundiyarra Aboriginal Corporation, an alcohol free Aboriginal Hostel; the Geraldton Street Work Aboriginal Corporation which works with Aboriginal youth through programs and services aimed specifically to their needs; and two primary schools.
- 25 Consequently, it was submitted by Mr Blayney that the grant of the application would not be in the public interest because a discount, high volume liquor outlet has the potential to exacerbate existing crime and anti-social behaviour and inflame tensions within the local community.

Hon Paul Brown MLC

- 26 Mr Brown is the Member for the Agricultural Region, which includes Geraldton. According to Mr Brown, he is well aware of the many social issues that the suburb of

Utakarra and its neighbouring suburbs Karloo and Rangeway experience. These suburbs are predominantly occupied by low-socio economic residents who experience the many issues that come with unemployment and low income levels. Drug and alcohol abuse is a major contributor to domestic violence, anti-social behaviour and crime and there are many at-risk groups who live in these suburbs.

- 27 Mr Brown submitted that the proposed liquor store, which is to be located on the property next to an existing packaged liquor outlet attached to the local IGA supermarket, will encourage a price competition between the two outlets for market share, which will be detrimental to the residents of Utakarra and the surrounding suburbs.
- 28 Because the operation of a packaged liquor outlet at this site has the potential to negatively impact the local community, it was submitted that granting the application was not in the public interest.

Richard de Trafford

- 29 Mr de Trafford is a Councillor for the City of Greater Geraldton, Willcock Ward, and submits his objection as a concerned community member and on behalf of concerned constituents.
- 30 Mr de Trafford contends that the growth forecasts for Geraldton, as contained in the applicant's PIA, have been overstated due the more recent downturn in the mining industry. Many of the economic forecasts are no longer valid and infrastructure projects have been delayed. The City of Greater Geraldton Local Planning Strategy WA Tomorrow Projections has a growth of 1.9% and a population of 56,211 in 2030, while the medium growth scenario of 3% would mean a population of 68,932 in 2030.
- 31 It was submitted by Mr de Trafford that there are 20 licensed premises that sell packaged liquor in Geraldton, one of them on the adjoining property to the applicant's premises, for a current population of around 42,000. This means there is one outlet for every 2,100 people. In the report "Access to Alcohol Outlets, Alcohol Consumption and Mental Health" (Pereira G, Wood L, Foster S, and Haggart F) it was 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. In a further report, "Predicting Alcohol-Related Harms from Licensed Outlet Density: A Feasibility Study" a key finding was:

"there is very strong research evidence that the frequency of assaults increases with increases in the density of licensed premises. Evidence regarding the relationship of alcohol outlet density to road crashes and drink driving is less consistent however this may be a feature of problems

with research design. There is also some evidence of positive relationships between outlet density and the extent of other harms such as homicides, child abuse and neglect, self-inflicted injury, and alcohol-related deaths and illnesses.”

- 32 Mr de Trafford stated that as a volunteer ambulance officer he has attended more assaults and alcohol-related incidents in the suburbs of Rangeway and Karloo than any other suburb in Geraldton except for maybe Spalding. Rangeway, Karloo and Spalding are on the lower end of the socio-economic scale and have a greater number of people who would be at risk of problems relating to alcohol abuse.

Ms Corryn Bull, Chair Rangeway, Utakarra, Karloo Progress Association

- 33 Ms Bull submitted that the Rangeway, Utakarra, Karloo Progress Association Inc was formed in 2012 as an independent voice for the aspirations, needs and issues of the Rangeway, Utakarra and Karloo community in Geraldton. The Association has worked hard to build a strong network with other community groups and organisations to combat the low socio-economic problems that plague their suburbs.
- 34 According to Ms Bull, on a daily basis residents are witness to, or victims of, drug use, crime, domestic violence, poverty and truancy. Children are neglected and wayward, with primary school children being subjected to violence and domestic abuse regularly due to alcohol abuse within the home. Litter, in the form of broken bottles and cans is also a constant problem.
- 35 It was submitted by Ms Bull that the grant of the application will not produce a positive outcome for the local community.

Bundiyarra Aboriginal Community Aboriginal Corporation

- 36 The Bundiyarra Aboriginal Community Aboriginal Corporation opened in 1998 as the leading Aboriginal resource centre for the Midwest, Murchison and Gascoyne regions. The corporation offers a drug and alcohol free site for the betterment of Aboriginal people. Located on the Bundiyarra grounds is the Geraldton Streetwork Aboriginal Corporation which is responsible for the coordination of youth based activities aimed at 12-25 year olds.
- 37 It was submitted that Life, Honorary and Board Members of the Bundiyarra Corporation, along with staff, spend many voluntary hours at multiple Aboriginal Agencies in Geraldton trying to find solutions to the high level of domestic violence, suicide, mental health and criminal acts being conducted by Aboriginal and non-Aboriginal people. Many of these issues are caused by severe drug and alcohol addictions.
- 38 The suburbs of Utakarra, Rangeway and Karloo predominantly house Aboriginal families and there is already a liquor store servicing these suburbs. The local

community would benefit more from a larger supermarket offering a greater range of fresh fruit, vegetables and meat rather than a large liquor store.

Geraldton Streetwork Aboriginal Corporation

39 The Geraldton Streetwork Aboriginal Corporation (GSAC) was founded in the late 1980's to deliver the only Aboriginal youth service in the region, which now includes areas within the boundary of the City of Greater Geraldton. For over 28 years, GSAC has worked closely with troubled youth and families. A key focus through its community engagement is to guide Aboriginal youth to be good contributing members of society. It is not unusual for children with foetal alcohol syndrome and their families to use the services of GSAC. Recent events have seen a refocus on antisocial behaviour in the CBD area which is on the increase. Many of these youth come from dysfunctional families.

40 GSAC objects to the grant of the application because:

- competition will lead to lower priced deals for all forms of alcohol;
- lower prices will encourage binge drinking amongst youth (it is bad enough already);
- binge drinking leads to increased crime rate (Rangeview has recently dropped to the 17th worst neighbourhood in WA from being the worst in the State);
- young people who are disillusioned with their futures will find it easier to "talk through the bottle" expressing themselves through anger and violence;
- the location of the proposed liquor store will create dangerous traffic hazards given the increased traffic to and from the building. Very young children cross the road in that area to either use the IGA store or for transiting to and from school or town;
- Rangeway and St John's primary Schools as well as the John Willcock College are all within a kilometre of the proposed liquor store. GSAC is also located nearby;
- nearby bush land will become a haven for binge drinking with camps set up to take advantage of easy grog meaning police resources will also be stretched;
- youth convicted of offences are referred to GSAC to complete community hours. An increase in the provision of youth services is not something GSAC is geared towards. GSAC's ethos is to reduce the number of youth requiring assistance thereby promoting better citizenship amongst this group. Confidence and greater self esteem is a bonus outcome to them paying their dues to society;
- reduced government funding of essential services will see GSAC unable to do what it does best in guiding young people to be better tomorrow than they are

today. An increasing problem will not be addressed, leading to long term difficulties including youth alcoholism; and

- community safety groups like KURB and RUK have engaged the Aboriginal community to be much more responsible in how they conduct themselves as a collective.

41 It was submitted that GSAC has spent almost 30 years discouraging alcohol abuse and encouraging good citizenship and the grant of this application and the establishment of a liquor store at this location will undermine all that work.

The licensee objectors

42 It was submitted by the licensee objectors that the applicant's claims of population growth and economic prosperity in Geraldton are misplaced, and in recent times Geraldton has experienced an economic downturn, due mainly to the downturn in the mining industry. Other infrastructure projects, such as the Oakajee Port development have been delayed. Information from The Centre of Full Employment and Equity places Geraldton on an amber alert, meaning the area is medium to high risk, with the area identified as highly vulnerable to job loss.

43 According to the licensee objectors, unemployment in Geraldton is high, with the suburbs surrounding the proposed liquor store experiencing very high rates of unemployment, with a high proportion of at-risk persons living in these suburbs. The surrounding suburbs are socio-economically disadvantaged.

44 In response to the applicant's comments and evidence relating to the existing packaged liquor outlets in the area, it was submitted by the licensee objectors that the pricing of packaged liquor in Geraldton is on par with similar sized cities within WA, and pricing is kept very competitive by the way the many outlets monitor the pricing at other outlets. Each of the objectors has pricing "specials" which, under their retail banners, they must adhere to, ensuring "specials" pricing in Geraldton is similar to Perth. It was further submitted that the existing packaged liquor outlets in Geraldton collectively provide all the services proposed to be offered by the applicant, albeit they are not in one place. It was suggested that this has advantages for the consumer and constitutes the proper development of the industry. Some of the existing packaged liquor outlets have drive throughs, some are stand alone liquor stores, some are attached to supermarkets, and some have extensive ranges of premium liquor products, tailored over many years to match the needs of the local market.

The intervener's submissions and evidence

45 The EDPH intervened in the application to make representations regarding the harm or ill-health due to the use of liquor which may result from the grant of the application. Some of the key issues relevant to the application are:

- the applicant has indicated it will be supplying liquor at prices well below what is currently available in Geraldton;
- the large size format (1,200m²), store layout and location are risk factors for alcohol-related harm;
- the risk of harm associated with each of the characteristics of the store is exacerbated when introduced to an environment that already contains risk factors;
- the locality of the proposed liquor store contains numerous risk factors, including but not limited to –
 - the presence of at-risk groups in the locality who currently experience alcohol-related harm, both directly and indirectly;
 - alcohol-related domestic assaults rates are higher than the State rate;
 - the overall social profile of the locality; and
- research and literature highlight the potential for harm to occur by providing a contextual nexus to the specific locality and application characteristics.

46 It was submitted by the EDPH that there are 10 packaged liquor outlets within a 3km radius of the applicant's proposed liquor store, with an additional 6 outlets in the greater Geraldton area. The size of the applicant's store is equivalent to five additional liquor stores (based upon the size of the existing BWS liquor store in Geraldton), thus significantly increasing the availability of alcohol within the locality. Alcohol availability is associated with alcohol-related harm, problems and ill-health. Research spanning more than 30 years demonstrates a positive relationship between availability of alcohol and the frequency and range of social and health problems.

47 Price is also an important factor when considering the potential impact of the grant of the application. The EDPH submitted evidence from a 2011 survey conducted in Perth where 41% of respondents indicated that they would buy more, in terms of quantity, if there was a new cheap alcohol outlet opened in their area. According to the EDPH, if the literature is accepted that price can influence both consumption and/or harmful drinking patterns, it can be seen that the increased availability of liquor, at costs well below what is currently available in the locality, could impact on ill-health and other problems, both in the immediate term, but particularly in the future.

48 Convenience of location of a venue selling low priced alcohol could also influence patron decisions to purchase, in terms of frequency and quantity, as well as consumption. Consequently, the EDPH expressed concern in regard to the potential for impulse/opportunistic buying by at-risk groups as a result of the prominent location of the proposed venue. This is more problematic given that there are organisations in the locality servicing those with complex problems involving alcohol use. It was

observed by Professor Donovan, when commenting on an application by Gull Petroleum for a liquor licence that –

“Persons most susceptible to impulse buying from an experiential perspective are persons attracted to the use of alcohol to alter their mood. This would include many under and over age young people, heavier drinkers and those with alcohol dependence problems. Young bored males may be especially susceptible to impulse purchasing during the evening hours.”

- 49 The EDPH submitted that research indicates that per capita sales made by liquor stores were closely and positively related to level of assaults, road crashes, breath alcohol levels of drink-drivers and alcohol-attributable hospitalisations.
- 50 The EDPH submitted evidence relating the community characteristics of the locality in which the proposed liquor store is to be located. The suburb of Utakarra forms part of the Statistical Area Level 2 (SA2) of Geraldton East, which according to the Australian Bureau of Statistics is one of the more disadvantaged SA2's in Western Australia. The unemployment rate in Greater Geraldton has risen sharply since 2012 to be well above the State rate with the suburbs in close proximity to the proposed liquor store experiencing very high rates of unemployment. Information from the Midwest Community Alcohol and Drug Service indicates that there are already high levels of social problems in the local area.
- 51 Data was also submitted on existing alcohol consumption patterns in the area. In 2010/11, the estimated per capita consumption, of litres of pure alcohol, in the Statistical Subdivision of Geraldton was 24.89, compared to the adjoining Subdivision of Greenough with 11.95 and the State per capita consumption of 13.24. The data indicates that the per capita consumption of alcohol in the Geraldton Subdivision is significantly higher than both Greenough and the State rate. The hospitalisation rate for 'all alcohol-related conditions' for all Geraldton East SA2 and Geraldton SA2 residents were also significantly higher (1.19 and 1.42 times) than the corresponding State rate.
- 52 Alcohol-related domestic assault offence rate per 1,000 persons in the Subdistrict of Geraldton increased in 2014 from 2013, and is about 2.5 times the State rate. The rate of alcohol-related domestic assaults in the suburbs of Utakarra, Wonthella, Rangeway and Karloo is between 5 and 14 times the State rate.
- 53 In conclusion, it was submitted by the EDPH that:
- there are a number of risk factors associated with the application that increase the risk of harm;
 - the intervention shows that Con's Liquor Geraldton will not be an ordinary liquor store, creating a significant increase in the economic and physical availability of alcohol in the locality; and

- by nature of the volume of alcohol that can be sold into the community via this store, its potential to increase related harm (both short and long term), is of great concern. This is particularly so given Con's Liquor Geraldton would operate in a community where there are at-risk groups, disadvantage and concerning levels of harm.

Determination

- 54 The applicant seeks to establish a large format, destination packaged liquor outlet in Utakarra, a suburb of Geraldton. The proposed liquor store will be approximately 1,200m² and carry up to 4,000 lines of product. The applicant submits that it is experienced in the operation of destination liquor stores, having previously established similar venues in Perth and Bunbury. It was also submitted that the proposed outlet will be a large upmarket modern purpose built store with services and facilities which are currently not available from any other packaged liquor outlet in the region. It will provide the largest and most diverse range of liquor north of Perth. According to the applicant, there will be a focus on wine products from Australia and all over the world, with some products not being available at any other Western Australian packaged liquor outlet. It is envisaged that the proposed liquor store will service consumers in Geraldton and the surrounding region.
- 55 There is no presumption in favour of the grant of an application under the Act. The opposite applies, where an applicant must adduce sufficient evidence to satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(2) of the Act).
- 56 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 57 In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

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

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

- 58 The factual matters which the licensing authority is bound to take into account when determining whether the grant of an application is ‘in the public interest’ are those relevant to the primary and secondary objects of the Act as set out in s 5.
- 59 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
 - to minimise harm caused to people, or any group of people, due to the use of liquor; and
 - 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.
- 60 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
 - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 61 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 62 Each application must be dealt with on its merits (refer s 33) but the licensing authority has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest (refer *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
- 63 The applicant submitted a considerable volume of evidence to support its case. In consideration of this evidence, which includes the survey data and consumer questionnaires, I find that the grant of the application would be catering to the requirements of consumers for liquor and related services as contemplated in object 5(1)(c) of the Act. However, the application must also be considered in the context of the other objects of the Act, one of those being to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. It is this issue which has been the focus of many of the objectors and interveners.

64 Some of the key data concerning the socio-economic profile of Geraldton and the suburbs surrounding the proposed liquor store include:

- the MGA Report indicates that unemployment in Geraldton (7.2%) is considerably higher than the State rate (4.7%), with very high rates of unemployment in the suburbs of Utaarra (11.4%), Rangeway (12.2%) and Karloo (18.9%);
- evidence from the EDPH indicates that the unemployment rate has risen sharply in Geraldton in the past few years;
- socio-Economic Index for Areas (SEIFA) for Utaarra is 1, Rangeway 1 and Karloo 1, which indicates that these suburbs are highly disadvantaged (the lower the index, the greater the level of disadvantage);
- alcohol-related domestic assault offence rate per 1,000 persons in the Subdistrict of Geraldton increased in 2014 from 2013, and is about 2.5 times the State rate. The rate of alcohol-related domestic assaults in the suburbs of Utaarra, Wonthealla, Rangeway and Karloo is between 5 and 14 times the State rate;
- in 2010/11, the estimated per capita consumption, of litres of pure alcohol, in the Statistical Subdivision of Geraldton was 24.89, compared to the adjoining Subdivision of Greenough with 11.95 and the State per capita consumption of 13.24;
- the hospitalisation rate for 'all alcohol-related conditions' for all Geraldton East SA2 and Geraldton SA2 residents were significantly higher (1.19 and 1.42 times) than the corresponding State rate;
- the MGA report indicates that indigenous persons made up the following percentage of the population –
 - 6.6% of Geraldton
 - 23.7% of Utaarra
 - 24.3% of Rangeway
 - 32.7% of Karloo
- the MGA Report indicates that the median individual weekly income in Geraldton is 15.7% lower than the State median; Utaarra is 25.1% lower than the State medium; Rangeway is 33.4% lower than the State medium; and Karloo is 30.1% lower than the State medium; and
- the MGA Report indicates that the median household income in Geraldton is 39.9% lower than the State median; Utaarra is 27.3% lower than the State median; Rangeway is 43% lower than the State median; and Karloo is 43% lower than the State median.

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- 65 In addition, the service provider objectors have provided evidence of their personal experience, gained over many years, of working with at-risk groups and individuals who experience alcohol-related problems on a daily basis. This subjective evidence is both relevant and probative and in my view should be accorded considerable weight. This evidence, together with other data submitted by the objectors and intervener, and by the applicant itself, clearly establishes that some of the suburbs surrounding the proposed liquor store are highly disadvantaged and the abuse of alcohol and subsequent harms are currently present at concerning levels. The data also indicates that from a broader perspective, Geraldton as a town has consumption and alcohol-related issues.
- 66 Alcohol abuse is also affecting the children in the locality. Ms Mandy Reilly, Chairperson, Rangeway Primary School Board, indicated that the school/community has one of the lowest socio-educational advantage rankings in the State. Ms Reilly stated that there are several issues that impacted on the lives and learning of students in the area, including domestic violence, intergenerational poverty, drug and alcohol abuse, gambling, homelessness, unemployment and crime. Students experience trauma and neglect as part of everyday life.
- 67 The applicant submitted that the proposed liquor store is aimed at serving a much broader, regional catchment rather than targeting the locality. It also submitted that it has operated popular large format liquor stores in areas with a similar socio-economic profile to Geraldton, namely Balga and Carey Park, and the operation of those stores did not negatively impact on the local community. According to the applicant future population and economic growth for Geraldton is quite positive.
- 68 The Commissioner submitted evidence to indicate that following the opening of Con's Case Place Balga, alcohol-related offences in the area increased and more importantly, the total proportion of alcohol-related domestic assault offences increased substantially. The EDPH submitted that the rate of alcohol-related domestic assault offences per 1,000 persons in Balga was almost 150% higher than the State in 2012, over 100% higher than the State in 2013 and more than 35% higher in 2014. Also, Balga has a higher rate of combined domestic and non-domestic alcohol-related assault offences per 1,000 persons compared to the State in 2012, 2013 and 2014. According to the EDPH, this data provides some insight into the potential future impact of the proposed liquor store in Geraldton.
- 69 The Commercial Activity Centres Strategy for the City of Greater Geraldton, which was developed in 2013, provides different scenarios for population growth over the next 20 years, ranging from a possible growth rate of 1.5% up to 5%. The more aggressive forecasts rely upon economic growth in export-driven industries to provide employment for the larger population. The Strategy suggests that as Geraldton grows and matures, its population is likely to become more affluent which is expected to translate into increased demand for goods and services. However, the Strategy acknowledges that at present, Geraldton's median weekly household income and average house hold

size are low compared to the State average and the unemployment rate is much higher and the participation rate is considerably lower. According to the Strategy, income is a significant factor in determining demand. In terms of the development of large format retailing, the Strategy notes that one of the challenges for planners and policy makers is the decline in competition and emerging monopoly/duopolies in specific areas.

- 70 In my view, particularly in light of more recent events such as the significant downturn in the mining industry (demonstrated by the sharp rise in unemployment in the last few years) and the delay in the commencement of other infrastructure activity (i.e. the Oakajee project), the applicant's growth projections for the area are questionable.
- 71 In considering the merits of the applications and the evidence and submissions of the parties, there is no doubt in my mind that tension arises between advancing the various objects of the Act, particularly object 5(1)(b) - minimising alcohol-related harm and object 5(1)(c) - catering to the requirements of consumers for liquor and related services. In such circumstances, I am required to weigh and balance those competing interests (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).
- 72 Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors* [2001] WASCA 410 said:

"The Act directs attention to the minimisation of alcohol related harm generally (s 5(1)(b)). The relevant question for the Court, in that case, is the level of alcohol related harm, due to the use of liquor, which is likely to result from the grant of an application. This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it seems to me that must necessarily be assessed against any existing harm or ill health so as to assess the overall level which is likely to result if a particular application is granted. Where, as occurs in probably the majority of cases, the existing level of alcohol related harm is no greater than that which appears to be commonly accepted in the community, the distinction is probably not significant. However, where there is already a very high and serious level of alcohol related harm in a community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words, it is not the "risk" of harm in some abstract sense which is relevant, but rather the risk having regard to the proved circumstances of the particular area in relation to which the application is made."

- 73 Similarly, Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207, having referred to the *Lily Creek* decision, went on to observe:

“..... 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.”

- 74 Specific evidence has been provided relating to the socio-economic profile of the area surrounding the proposed licensed premises. The EDPH has also provided evidence from international and national research demonstrating a correlation between price and availability of alcohol and the subsequent effects on the level of alcohol consumption and alcohol-related problems.
- 75 While the applicant argues that the catchment area for the proposed liquor store will be much wider than the immediate locality surrounding the store (it is to have a regional catchment area), nonetheless, I am of the view that the premises, and in particular the provision of liquor at prices cheaper than other outlets in the locality, will be attractive to at-risk persons in the immediate suburbs surrounding the premises. The Patterson survey indicates that at least 53% of respondents within a 3 km radius of the proposed liquor store would purchase liquor from the premises, with competitive pricing and specials being a significant factor for this decision. Although the applicant submits that there will be a focus on wine and boutique beer products, mainstream liquor products will also be available at prices, which by the applicant’s own admission would be “well below the existing prices currently being charged in Geraldton” and there will be weekly promotions sold at “extremely keen prices”. The grant of this application will put downward pressure on the price of liquor in Geraldton.
- 76 Research demonstrates a clear link between price, consumption and harm. In a report to the Australian National Competition Council, citing research data, it was stated that *“The price of alcohol has a very direct impact upon the levels of purchase and consumption. Provision of alcohol at lower costs is known to increase consumption among various groups, especially those on limited incomes.”*
- 77 In LC18/2012, the Liquor Commission, by majority, rejected an application by Liquorland to establish a destination liquor outlet in Maylands. The majority relied upon the evidence of a number of ‘service provider objectors’, who provide support to groups of ‘at risk’ persons, particularly those suffering from alcohol addiction. The service providers were able to give valuable evidence about the potential harm from the increased availability of cheap alcohol. This evidence, together with other evidence, supported the conclusion of the majority that there would be a real likelihood

of harm and ill-health resulting from the grant of the application due to the proximity of the proposed liquor store to the service providers. The decision of the majority was upheld by the Supreme Court on appeal (*Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC51 per Edelman J).

- 78 In agreeing with the above statement from Wheeler J in *Lily Creek* supra, Edelman J went on to conclude that:

“In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level. It may be that where an existing level of risk is greater, a small increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing ‘at risk’ persons who might be further affected.”

- 79 Consequently, a relevant consideration to the determination of the application is the level of harm, due to the use of liquor, which is likely to result if the application is granted. This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it must be assessed against any existing harm or ill-health so as to assess the overall level which is likely to result. Whether such harm or ill-health will arise requires an element of prediction (refer *Malec v JC Hutton* (19900 169 CLR683).

- 80 According to the applicant, the proposed liquor store will enhance the amenity of the area generally by providing new services, purpose built facilities and a wide product range which do not exist in the area. However, the locality surrounding the proposed liquor store is highly disadvantaged, with the presence of at-risk groups who currently experience alcohol-related harm (both consumers and victims).

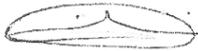
- 81 The applicant submitted that the objections are unsubstantiated by any cogent evidence and greater weight should be given to its evidence, which includes expert reports. In *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* (supra), Liquorland submitted that the majority erred by relying upon ‘the evidence’ submitted by the service providers because they were in effect only submissions, or, at most, expressed opinions and made assertions which were unsupported by evidence. This submission was rejected by Edelman J who stated that the evidence of the service providers was expert evidence. He said:

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

- 82 In consideration of the evidence as a whole, I find, on the balance of probabilities, that a large format packaged liquor outlet, providing cheaper priced liquor, in this location

has the potential to increase the existing level of alcohol-related harm in the locality and this presents an unacceptable risk to an already vulnerable community. Per capita alcohol consumption in Geraldton and the surrounding areas is almost double the State rate. As Wheeler J observed in *Lily Creek*, where there is already a high and serious level of alcohol-related harm in a community, a relatively small risk of increase in that level of harm might be unacceptable.

- 83 In weighing and balancing the competing interest in this case, I am of the view that greater weight should be given to the welfare of the local community over the benefits of cheaper priced liquor, range of products and diversity of choice. The locality is reasonably well serviced for liquor outlets, albeit none of the existing outlets are of the same size, or individually would offer the same range of product as the applicant's proposed liquor store.
- 84 I therefore find that the grant of the application is not in the public interest and the application is refused.



Peter Minchin

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING