

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

Applicant: Woolworths Ltd
(represented by Mr Henry Jackson instructed by Mr Tony Schwartz of Back Schwartz Vaughan)

First Intervener: Executive Director of Public Health
(represented by Ms Caroline Chapman of State Solicitor's Office)

Second Intervener: Commissioner of Police
(represented by Ms Jessica Berry of State Solicitor's Office)

Objectors:

- Sheet Nominees Pty Ltd, Vanda Investments Pty Ltd, Blair Investments Pty Ltd and Hade Pty Ltd
(represented by Mr Ian Curlewis of Lavan Legal)
- Northam Chamber of Commerce
- The Salvation Army – Northam Corp
- Cancer Council WA Inc
- Hon. Paul Brown MLC
- Hon. Mia Davies MLA
- Dr Kevin Christianson
- Dr Julianne Roe
- Dr Stephanie Jane Spencer
- Ms Leonie Knife
- Mr Alan Roy Eades
- Mr Ross John Oxley
- Mr Timothy Ryan
- Ms Nicole Bell
- Ms Shirley Smith
- Ms Donna Marie Fehlauer
- Mr Simon Wooding
- Mr Edward Blair
- Mr Reg Stevens
- Mr Randle William Beavis
- Mr Robert Graham Davey

- Ms Tania Davey
- Ms Noelene Norrish
- Mr Colin and Mrs Debra Pedder
- Mr John Proud
- Mr Dennis and Mrs Kathy Saunders
- Mr Simon Todd Northey
- Mr Preston Sydney and Mrs Elizabeth Ann Smith
- Ms Rosalie Moller
- Mr Maxwell Carlton Hubble
- Ms Karen Buttersfield

Commission: Mr Seamus Rafferty (Chairman)
Mr Michael Egan (Member)
Dr Eric Isaachsen (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for review of the decision of the delegate of the Director of Liquor Licensing to refuse an application for the conditional grant of a liquor store licence for premises “BWS – Beer Wine Spirits”.

Premises: BWS – Beer Wine Spirits, Shop 20, Northam Boulevard Shopping Centre, 171 Fitzgerald Street, Northam

Date of Hearing: 20 May 2016

Date of Determination: 11 January 2017

Determination: The application is refused and the decision of the Delegate of the Director of Liquor Licensing is affirmed.

Authorities referred to in Determination:

- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors* (2000) 22 WAR 510; [2000] WASCA 258;
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Kununurra Liquor Pty Ltd v Executive Director of Public Health and Others* (LC 09/2016)
- *Executive Director of Health v Lily Creek International Pty Ltd & Others*

Background

- 1 This is an application by Woolworths Ltd (“the applicant”) to review a decision of the delegate of the Director of Liquor Licensing (“the Director”) pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”) refusing an application for a liquor store licence to be known as BWS – Beer Wine Spirits (“the proposed BWS store”) adjacent to the existing Woolworths supermarket in the Northam Boulevard Shopping Centre at 171 Fitzgerald Street, Northam (“the Northam shopping centre”).
- 2 The Director’s decision and reasons for refusing the application were published on 14 December 2015.¹
- 3 The application for the grant of the licence, dated 16 December 2014, was accompanied by a Public Interest Assessment (“PIA”) detailing the nature of the proposed licensed premises and addressing the Director’s PIA policy.
- 4 Objections were lodged pursuant to section 73(4) of the Act by:
 - Sheet Nominees Pty Ltd
 - Vanda Investments Pty Ltd
 - Blair Investments Pty Ltd
 - Hade Pty Ltd
 - Northam Chamber of Commerce
 - The Salvation Army – Northam Corp
 - Cancer Council WA Inc
 - Hon. Paul Brown MLC
 - Hon. Mia Davies MLA
 - Dr Kevin Christianson
 - Dr Julienne Roe
 - Dr Stephanie Jane Spencer
 - Ms Leonie Knife
 - Mr Alan Roy Eades
 - Mr Ross John Oxley
 - Mr Timothy Ryan
 - Ms Nicole Bell
 - Ms Shirley Smith
 - Ms Donna Marie Fehlauer
 - Mr Simon Wooding
 - Mr Edward Blair
 - Mr Reg Stevens
 - Mr Randle William Beavis
 - Mr Robert Graham Davey
 - Ms Tania Davey
 - Ms Noelene Norrish

¹ Decision A57290

- Mr Colin and Mrs Debra Pedder
 - Mr John Proud
 - Mr Dennis and Mrs Kathy Saunders
 - Mr Simon Todd Northey
 - Mr Preston Sydney and Mrs Elizabeth Ann Smith
 - Ms Rosalie Moller
 - Mr Maxwell Carlton Hubble
 - Ms Karen Buttersfield
- 5 The Commissioner of Police (“the Police”) and the Executive Director of Public Health (“the EDPH”) each lodged a notice of intervention pursuant to section 69 of the Act.
- 6 The hearing of the review by the Liquor Commission (“the Commission”) was conducted on 20 May 2016.

Submissions on behalf of the applicant

- 7 The PIA relied upon by the applicant describes the town of Northam as the primary regional centre of the Central Wheatbelt District with a population of 6580 people. The town has been identified under the State Government’s Regional Centre Development Plan (“the Northam Growth Plan”) as one of the nine “Super Towns” within Western Australia. It is further submitted that Northam is in a population growth phase and that the population of Northam will increase by over 200% to 20,000 by 2021.
- 8 The Northam Growth Plan also highlights some leakage of retail spending to Metropolitan Perth Centres such as Morley and Midland for what are referred to as higher order goods and a requirement for additional rentable floor space, including floor space for 2-3 full-line supermarkets.
- 9 The proposed store will occupy approximately 154 square metres and operate beside but separate to the existing Woolworths supermarket. It is contended that the proposed store ‘represents the first opportunity for residents in Northam to benefit from a “one-stop” shopping experience..... because existing packaged liquor outlets.... are not associated with a traditional supermarket shopping environment.’ Further, it is submitted that ‘the location of the licensed premises in shopping environments is neither unusual nor inappropriate’ but ‘is encouraged by established town planning provisions...because residents travel to shopping locations to purchase their daily, weekly or monthly shopping requirements and in doing so....expect a full range of services and facilities, with each conveniently placed in easy walking distance to the others’.
- 10 The applicant submits that the community of Northam has been disadvantaged to date as they are yet to have the benefit of “one-stop” shopping that the public experience at so many other locations in Western Australia.
- 11 It is submitted that the proposed BWS store will:

- a) open into the internal mall of the Northam shopping centre;
 - b) operate in accordance with the trading hours of the supermarket, except Sunday when it will close;
 - c) employ three full time and five permanent part time/casual staff;
 - d) allow for an “interactive” shopping experience; and
 - e) operate in accordance with Woolworths well established and proven harm minimisation and responsible service of alcohol policies.
- 12 In support of the application, the applicant provided a social risk matrix and assessment, information on the trading record of Woolworths as well as various statements with special emphasis on the fact that the grant of the application shall provide consumers with greater convenience by offering one-stop shopping.
- 13 The applicant relies upon the results of the West Coast Field Services survey, which was contracted by the applicant to independently survey the residents of Northam to assess the community’s overall support for the proposed BWS store. It is submitted that the results of that survey, combined with the statistical and other evidence relied upon by the applicant, demonstrate that there is a public requirement for the BWS store in this location and that to grant the application will contribute to the proper development of the liquor industry in a manner which reflects the diversity of consumer requirements.
- 14 The PIA addressed in some detail the “at risk” groups in the community, the demographic make-up of the community and the level of harm and ill-health in the community as far as the applicant was able to ascertain from publically available information. In summary, the applicant contends on the basis of its research and analysis that:
- a) by reference to the “Safety Plan” prepared by the local authority in 2011, the vast majority of residents feel safe in their community;
 - b) mining industry workers are under-represented, compared to the State average;
 - c) while there is an over-representation of Aboriginal persons, there is no evidence to suggest this particular group should be considered at an elevated level of harm or risk of harm if the application were granted;
 - d) although the medium income levels are low, the cost of renting a dwelling is low and housing affordability is stronger compared to Perth;
 - e) unemployment is high (7.2% compared to a State average of 4.3%), but the Northam Growth Plan identifies a strong decline in unemployment

below State unemployment levels, apparently driven by a strong business environment;

- f) there is a clear weighting towards an older community, with a high representation of older people aged 65 years plus (15.7% compared to the State average of 12.3%) and under representation of young persons aged 15 – 24 years (12.7% compared to a State average of 13.7%);
- g) while there are a higher number of labourers and a lower level of professionals (but higher level of skilled trade persons) than the State average, the Northam Growth Plan envisages a higher demand for professionals which will result in a higher skilled workforce;
- h) the Socio-economic Indexes for Areas (“SEIFA”), a measure of relative advantage and disadvantage in a locality, confirm the Shire and Northam are disadvantaged communities, but SEIFA indices represent a combination of variables and there is authority which suggests there is no statistical difference in rates of high risk drinking by socio-economic status as measured by SEIFA (and other authority suggesting people on low incomes are less likely to be risky drinkers) supporting the proposition the low SEIFA score for Northam does not translate into a higher risk of alcohol-related harm;
- i) there is a higher representation of one parent families in Northam, but rather than being at a higher risk of alcohol-related harm there is evidence this group is, in fact, at lower risk of harm compared to couples with dependent children;
- j) Northam is a significant tourist destination with a high percentage of day trip visitors and whilst violence and anti-social behaviour should not be an inevitable consequence of high visitor numbers, it must be a contributing factor in popular tourist destinations;
- k) the rates of domestic violence assaults and non-domestic assaults in the Wheatbelt District, within which Northam is located, are low compared to State average;
- l) the rate of alcohol-related domestic violence assaults and alcohol-related non-domestic assaults are no greater in the Shire of Northam compared to the Midlands Statistical Division and WA, supporting the contention there is no evidence of any greater level of alcohol-related harm in Northam than what is commonly accepted in any other community;
- m) although alcohol-related hospitalisations for the town of Northam (as recorded in the Drug and Alcohol Office Surveillance Report dated November 2011) are significantly higher (1.48 times for all persons for the period 2005-2009) than the corresponding State rates, it is important to consider that the proportion of hospitalisations attributable to alcohol use is calculated using an aetiological fraction (the proportion of a hospitalisation attributable to a particular condition) which means the rate

may be higher for Northam because of the “significantly older population” and the types of conditions from which they suffer (i.e. their condition may not be due to alcohol use at all, but may be recorded as alcohol-related, at least partly because of the use of the aetiological fraction);

- n) there are no potentially sensitive facilities located near the proposed BWS store;
- o) alcohol is just one of many determinants of the overall health of Australians, and as was found in the report titled “Australia Health 2008”, the net harmful effects of alcohol was found to represent 2.3% of the population, significantly lower than many other determinants;
- p) the protective factors of alcohol, such as reduced risk of heart disease and stroke, are well known, but often overlooked;
- q) Australia is a mature liquor market with the increase in density of licensed premises year after year having little or no effect on the level of alcohol consumption throughout Australia supporting the contention the proposed BWS store, whilst meeting the needs of its customers, will not result in those customers consuming more alcohol or result in any perceivable impact on the existing levels of harm or ill-health in the community;
- r) the majority of customers at the proposed BWS store will use a motor vehicle because of its location and the bulky nature of the product they would be purchasing thus limiting the potential risk of any anti-social behaviour attributable to the proposed store;
- s) the co-location of the proposed BWS store with other businesses and the Northam shopping centre can only be a benefit to other businesses in the locality, as more people will attend this area for their shopping requirements;
- t) the overall amenity will be improved;
- u) whilst the particular characteristics of the people who work in the vicinity of the proposed BWS store are unknown, there is no evidence to suggest the approval of the application will cause offence, annoyance, disturbance or inconvenience to anyone in the locality.

15 Ultimately, it is contended by the applicant that:

- a) the proposed BWS store will satisfy the needs of the public by providing amenity, service, range, convenience, price and employment stability without any additional risk to any “at-risk” groups or any likelihood of an increase in the rates of crime or ill-health;
- b) the locality is a rapidly growing affluent population with an increased need for services in general and packaged liquor in particular and the

grant of the application will cater to consumers in terms of choice, diversity and convenience both now and into the foreseeable future;

- c) the proposed BWS store will provide a “one-stop” shopping alternative for people to shop for their liquor and grocery requirements at the same time and place in keeping with the local authority’s planning objectives;
- d) the “East End Retail Revitalisation Plan” accompanying the PIA depicts the Northam shopping centre along with other businesses and facilities making up the retail and business centre of the town along and around Fitzgerald and adjoining streets (noting that the Centre is well established and comprises 22 retail shops with the Woolworths supermarket, the anchor tenant since 1988, having undergone a major refurbishment in 2010).

16 In response to issues raised by licensee objectors, the applicant submits that the previous decisions of the Commission referred to by the licensee objectors to support the contention that “one-stop” shopping does not, of itself, justify the grant of the application are distinguishable and, in contrast to these decisions:

- a) effectively Northam has only three dedicated packaged liquor stores;
- b) the proposed BWS store will offer a large range of products not available at other stores; and
- c) the proposed BWS store is to be located in a large suburban shopping centre which caters to the main shopping requirements of the town in one complex as opposed to a neighbourhood shopping complex.

17 In response to the claim that the applicant’s survey results do not demonstrate overwhelming support, the applicant, whilst acknowledging that its survey was conducted outside the Woolworths supermarket, points out that the survey is not the only evidence of support for the proposal (e.g. convenience of “one-stop” shopping at a very popular supermarket, and the range of products and services to be provided).

Submissions on behalf of the EDPH

18 The EDPH submits that there is an existing level of alcohol-related harm and ill-health caused by alcohol within the Northam community, some of which is:

- a) higher than State levels; and
- b) commonly indicated in the literature as having an association to packaged liquor availability, suggesting existing packaged liquor availability is impacting on the community.

- 19 The EDPH further submits that the existing level of alcohol-related harm and ill-health is evident from the following:
- a) the Northam Shire Community Safety and Crime Prevention Plan 2011-2015 which notes, on the basis of a 2010 community survey, alcohol-related issues (such as anti-social behaviour) are an issue of community concern;
 - b) the applicant's own survey in which 48% of respondents said the proposed BWS store is a bad idea; and
 - c) the data provided by Police, including:
 - a consistently higher rate (i.e. per 1000 persons) of alcohol-related non-domestic assaults than the State rate over 2012 (5.5% vs 1.9%), 2013 (4.1% vs 1.8%) and 2014 (2.9% vs 1.4%);
 - a constantly higher rate of alcohol-related domestic assaults than the State rate over 2012 (7.4% vs 2.3%), 2013 (7.3% v 2.9%) and 2014 (7.3% vs 2.6%);
 - a high percentage of drink driving offences corresponding to people who would likely to have been drinking packaged liquor – 60 of the 88 (68%) drink driving charges over the period 1 January 2012 to 31 December 2014;
 - higher hospitalisation rates than the State average for some alcohol-related conditions, most particularly, cancers (1.66 times), assaults (1.47 times) and deaths from alcoholic liver cirrhosis (3.42 times); and
 - the number of, and increasing trend in, treatment episodes at the Northam Alcohol and Drug Service where alcohol was a drug of concern (approximately 50% of the 439 episodes between 1 January 2011 and 31 December 2013).
- 20 The EDPH submits that the reliance by the applicant on ABS data to the effect that alcohol consumption levels in Australia are declining in support of its contention that the proposed BWS store will have little or no effect on the overall level of alcohol consumption is flawed because:
- a) per-capita alcohol consumption has been increasing in WA and has been consistently higher than national figures;
 - b) there is jurisdictional evidence (a study in Victoria) to the effect that as liquor licence numbers increase so do alcohol-related harms, as well as peer reviewed research finding an association between the number of harms and packaged liquor outlets; and

- c) there is a significant body of research over more than 30 years demonstrating a positive relationship, albeit a complex relationship that may vary in magnitude over time and place, between alcohol availability and frequency and a range of social and health problems.
- 21 The EDPH cites a number of studies in support of its proposition that the type of harm that is occurring in Northam, such as alcohol-related domestic assaults, has links to packaged liquor availability which, at a minimum, indicates an increased risk of harm should another packaged liquor outlet be introduced offering convenience for those purchasing everyday groceries.
- 22 In response to the applicant's contention that the reports referred to in the intervention do not demonstrate a positive relationship between the availability of alcohol and associated harm, the EDPH maintains the studies do reflect a positive relationship as is evident from the following comments by the National Drug Institute (2007):
- *"There is a vast epidemiological research literature on the effects that legislative and regulatory controls on alcohol availability have on consumption and related harms and the relationship between these has been the subject of several comprehensive reviews in recent years (Babor et al. 2003; Heather & Stockwell 2003; Loxley et al. 2004). These reviews cite many studies – going back thirty years – which demonstrate a positive relationship between levels of alcohol consumption within populations and the frequency and range of social and health problems experienced by those populations.*
 - *"...for off-premises (e.g. bottle-shops), the positive relationship between alcohol availability and violence remained strong and was evidently independent of a wide array of population and place characteristics for which alcohol outlets act as markers."*

Submissions on behalf of the Police

- 23 The Police lodged a notice of intervention pursuant to section 69(6)(c)(ii) and (iv) of the Act on the grounds that:
- a) if the particular application is granted, public disorder or disturbance would likely result; and
 - b) any other matter relevant to the public interest.
- 24 The various submissions of the Police can be summarised as follows:
- a) as an evolving town currently undergoing rapid expansion of housing, infrastructure and services...the socio-economic positioning of the locality may shift with the emergence of "at risk" groups ...as the area matures and contingencies may need to be established to mitigate this;

- b) by reference to the “at risk” groups identified in the Drug and Interagency Strategic Framework for WA 2011 – 2015 which seeks to reduce and prevent the negative impacts which alcohol poses on the community, the over-representation of aboriginal groups, children up to 19 years of age, and unemployed people, together with the low socio-economic status of a relatively high proportion of people in Northam, will result in these priority groups suffering if the application is granted without appropriate trading conditions;
- c) in the Northam sub-District (or Shire) for the period between October 2013 and November 2014:
- 23% of all offences (or 228 of 978) were alcohol-related;
 - approximately 50% (or 62 of 129) of domestic assaults were alcohol-related; and
 - 20% (or 21 of 106) of non-domestic assaults were alcohol-related;
- d) in the suburb of Northam:
- 23% of all offences (or 132 of 559) were alcohol-related;
 - approximately 50% (or 58 of 122) of domestic assaults were alcohol-related; and
 - 20% (or 21 of 102) of non-domestic assaults were alcohol-related.
- e) juveniles represent the largest and most vulnerable “at risk” group, and whilst the applicant is committed to the “ID Under 25” initiative, other strategies would be beneficial to protect this vulnerable group;
- f) the proposed liquor store will undoubtedly be exposed to some level of theft, and security measures proposed by the applicant, while helpful, should include the security tagging of all spirits and display behind locked cabinets or behind the counter area;
- g) an increase in packaged liquor outlet density has been estimated, by various studies, to lead to an increase in family violence;
- h) it is irresponsible of the applicant to dismiss the issues associated with “at risk” groups by applying the logic that “individuals intent on making poor decisions will make them regardless”, without recognising or acknowledging the effect of the application upon the individuals residing in the locality;

- i) offences of theft by juveniles are not only a concern per se, but the consumption of the alcohol and the harm that will occur to the juveniles and those around them is concerning;
- j) the level of crime as evident from the crime data is undeniable and, in the view of the Police, demonstrates that the locality experiences a high level of alcohol-related harm which requires mitigation in the form of comprehensive and rigorous trading conditions;
- k) the fact the Police did not expressly object to the application does not constitute implied acceptance of the application by the Police;
- l) alcohol-related harm in the locality is concerning and an additional packaged liquor outlet has the potential to exacerbate the significant level of harm or ill-health in the area, a matter the Police have submitted should be mitigated by the imposition of the various trading conditions outlined in the intervention;
- m) in considering the requirement of consumers, the extent to which consumer requirements are currently being met by the existing liquor outlets is a relevant consideration in determining the benefits that might accrue to the public if the application is granted;
- n) given there are already six outlets selling packaged liquor within close proximity to the proposed BWS store, the only additional benefit from the grant of the licence will be the potential decrease in the cost of liquor due to commercial competition;
- o) an additional store in the locality may result in an unnecessary proliferation of liquor outlets that sell packaged liquor, an outcome not supported by the Act; and
- p) the proposed BWS store will not enhance the benefit to consumers that “one-shop” shopping ordinarily provides (due to the proximity of the three existing packaged liquor outlets) and the “one-stop” shopping argument is diminished in a rural context where the town itself is the destination.

Submissions from the Cancer Council of WA and the McCusker Centre for Action on Alcohol and Youth

- 25 The Cancer Council of WA (“the CCWA”) and the McCusker Centre for Action on Alcohol and Youth (“MCAAY”) lodged a joint objection to the application.
- 26 The grounds of objection are as specified in section 74(1)(a) and 74(1)(b) of the Act.
- 27 According to the joint submission:

- a) there is convincing evidence that alcohol use increases the risk of many different types of cancer;
- b) the Wheatbelt region has a significantly higher rate of hospitalisations for alcohol-related cancers than the WA State population, particularly for males, with 203 hospitalisations between 2007 and 2011 for cancer in which the consumption of alcohol was a causal factor and 30 cancer deaths attributable to the long term consumption of alcohol;
- c) a number of the particular demographic and social features of Northam increase the real risk of alcohol-related harm;
- d) Australian and International studies have established a consistent association between the density of alcohol venues in an area and violence, road accidents, child abuse and neglect, neighbourhood amenity and mental health, and the CCWA & MCAAY are concerned the increase in concentration of packaged liquor outlets in Northam, already high compared to other Wheatbelt towns with a similar demographic profile, such as Narrogin, could be expected to have an impact on the consumption of alcohol and associated risk of harm;
- e) by reference to examples and the types of discount prices and products offered by BWS stores, particularly the discounts offered for certain products like cask wine at large volumes for very low prices, CCWA & MCAAY submit the applicant's proposed premises would likely increase the availability of very cheap alcohol;
- f) young people aged between 14 and 24 years have been found to be at particular risk by consuming alcohol in ways that put their, and others', health at risk of acute harm; and
- g) the clustering of alcohol venues and packaged liquor outlets in a small geographical area with a low socio-economic status is of concern, such that the addition of another outlet for the sale of packaged liquor is not in the public interest.

Submissions from the Northam Chamber of Commerce

28 The Northam Chamber of Commerce lodged an objection pursuant to section 74(1) of the Act, contending the grant of the application would not be in the public interest as:

- a) Northam already has a high concentration of liquor outlets which can be directly linked to anti-social behaviour and alcohol-related violence;
- b) school children who congregate in the Northam shopping centre would be at risk of being subjected to potential anti-social behaviour;

- c) the proposed premises would have a negative impact on the surrounding businesses and employees who work in the vicinity of the shopping centre; and
 - d) the proposed premises would impact on the amenity, particularly for seniors who utilise the quiet space, by inevitably creating a “microcosm of anti-social behaviour due to the convenience of obtaining alcohol”.
- 29 The Chamber of Commerce submits that the location is entirely inappropriate and riddled with negative implications for local trading and social dislocation, with the potential to flow on to compound Northam’s level of anti-social behaviour.

Submissions from the Hon Paul Brown MLC

- 30 The Legislative Council member for the Agricultural Region and resident of the town of Northam has expressed a number of concerns in relation to the application:
- a) the community is already serviced by 6 hotels, 4 clubs and 3 take-away packaged liquor outlets, most within 1 km and all within 2 km of the proposed store, as a consequence of which the demand for convenient purchases is already being met;
 - b) the potential impact on local indigenous youth, who are increasingly disengaged with the normal structure of the community and face great social disadvantage from the effects of cheap alcohol;
 - c) the exposure to liquor advertising in the Northam shopping centre where children gather after school;
 - d) the potential for an increase in anti-social behaviour, in particular the potential for the elderly, who congregate in the centre, to become victims to “predatory and anti-social behaviour”;
 - e) the likelihood of a reduction in diversity because of:
 - the greater financial pressure on the existing small locally owned and operated liquor outlets; and
 - the inevitable increase in anti-social behaviour associated with the liquor outlet and corresponding reduction in amenity for many shoppers at the Northam shopping centre, who, as a result, are likely to shop elsewhere, increasing pressure on those shops located within the shopping centre.

31 Further to the response from the applicant to the objection, Mr Brown made additional submissions and lodged additional evidence. More specifically, he submits:

- a) the pubs and taverns in Northam also have the capacity to sell packaged liquor, not just the three separate bottle-shops referred to by the applicant;
- b) research has shown that a concentration of bottle-shops is associated with increased rates of domestic violence and alcohol-related chronic disease;
- c) there is a high proportion of aboriginal people in custody in WA, and Northam has a large aboriginal community with a high proportion, almost half, under the age of 18 years;
- d) substance abuse among many young people in the Wheatbelt is prevalent, with at risk alcohol consumption among 12 to 17 year old current drinkers significantly increasing in WA from 15.6% in 1993 to 24.3% in 2008;
- e) the Principal of St Joseph's School has expressed concern about the effects of opening another liquor store in Northam;
- f) a recent 2015 report by "Catalyse" reveals 36% of seniors feel Northam is a safe place to live, work and recreate, and only 52% feel the Northam shopping centre is a safe place to shop; and
- g) the "straw poll" conducted by Mr Brown was taken by speaking to people visiting the Northam shopping centre, local business owners and other concerned citizens, and reveals:
 - 26 out of 37 respondents were against the proposal;
 - 5 were not bothered; and
 - 6 were in favour.

Submissions from the Salvation Army

32 The Salvation Army expressed a number of concerns in relation to the application:

- a) the potential for an increase in anti-social behaviour;
- b) the ease of access to liquor and consequential increase in consumption and abuse, the normalisation of alcohol purchases with other shopping and its impact on young people;

- c) the number of liquor outlets is already sufficient; and
- d) the reliance of the applicant on population forecasts which are “highly unlikely” to be achieved given the population has only increased from 6580 in 2011 to 7000 in 2015.

Submissions from other Objectors

- 33 The common broad grounds of objection relied upon by these objectors were:
- a) there is disruptive behaviour in the Northam shopping centre on a very regular basis;
 - b) there is potential that availability of cheap liquor will increase, bringing more homeless people from outlying areas, leaving children unattended in the CBD and placing additional pressure on service providers;
 - c) the density of liquor outlets has been found to be related to alcohol problems;
 - d) there has been reported associations, in another jurisdiction, between an increase in outlet density and a higher risk of drinking at harmful levels, increased incidence of domestic violence and increased hospitalisations;
 - e) there does not appear to be any evidence of the population in Northam increasing;
 - f) Northam is adequately catered for with packaged liquor outlets that are modern, well stocked, well managed and strategically located within the CBD (with competitive pricing);
 - g) Northam has suffered from a significant degree of anti-social behaviour for many years; and
 - h) the location of the proposed store in close proximity to the local Catholic High School and the resultant exposure of liquor advertising /signage on children attending the centre is inappropriate.
- 34 The common themes in the objections lodged by the remaining objectors reflect a number of the concerns and submissions already referred to.

Submissions on behalf of licensee objectors

- 35 The licensee objectors have objected to the application pursuant to sections 74(1)(a), (b), (g)(i) and (j) of the Act.

- 36 By reference to a number of previous decisions of the licensing authority, the licensee objectors contend that the close proximity of other licensed premises to the proposed store entitles the Commission to find the affected area is already well serviced by packaged liquor outlets.
- 37 It is further submitted that the applicant's survey does not demonstrate overwhelming support for the application, particularly in light of the fact the survey was of people who apparently shop at Woolworths.
- 38 Moreover, the level of support is further diminished having regard to the Customer Catchment Survey ("CCS") conducted by the licensee objectors at various places throughout Northam in which:
- a) 1036 or 96% of the 1083 respondents to the survey indicated they are opposed to the grant of the proposed BWS store licence;
 - b) 973 or 90% indicated they believe existing harm or ill-health problems may worsen if another liquor store licence is granted; and
 - c) 199 of the 1083 respondents completed the survey in the Northam shopping centre of which 195 indicated they are opposed to the grant of the licence and 196 think harm or ill-health problems may worsen.
- 39 The reliance of the applicant on population projections in Northam as providing some justification for the grant of the licence lacks cogency given that:
- a) the population of Northam has only increased from 6009 in 2006 to 6580 in 2011 (or about 1.9% per year); and
 - b) the future and impact of the "Super Towns" project is uncertain and is highly unlikely to spur the significant growth the applicant relies upon.
- 40 The licensee objectors submit that the failure of the applicant to identify the Holyoake centre (located approximately 250 metres from the proposed store) in its PIA is an indication the applicant has only conducted a superficial review of the locality without any consideration of the practical effect that another packaged liquor outlet may have on the local community.
- 41 Additionally, the failure to identify the Northam Recovery Centre (operated as Fresh Start), Waminda House Womens' Refuge and the existence of the Alcoholics Anonymous group meeting weekly at the Salvation Army building, all of which are within the defined locality, contradicts the claim by the applicant in the PIA that there are no potentially sensitive facilities located near to the proposed BWS store that have clientele who could be attracted to, or offended by, the BWS store.
- 42 The licensee objectors contend that there is clear evidence that Northam experiences a significantly higher rate of crime than what is ordinarily accepted in the broader community, and recent research in NSW, which found there are

thresholds above which further liquor outlets will impact on domestic violence and non-domestic violence assaults, suggests the rate of crime will increase if the application is granted.

- 43 The applicant does not accept many of the criticisms and observations made by the various objecting parties which were outlined in responsive submissions.

Statutory Framework

44 In *Woolworths Ltd v Director of Liquor Licensing*² His Honour Buss JA set out the statutory framework for a determination of an application pursuant to section 25 of the Act in the following terms, namely:

- a) by section 38(2) of the Act, an applicant has to satisfy the Commission that the granting of an application is in the public interest;
- b) the expression 'in the public interest', when used in a statute, imports a discretionary value judgment;³
- c) the factual matters which the Commission is bound to take into account, in determining whether it is satisfied that the granting of the application is in the public interest are those relevant to the objects of the Act, as set out in section 5(2) of the Act;
- d) the factual matters which the Commission is entitled to take into account, in determining whether it is satisfied that the granting of an application is in the public interest are those set out in section 38(4) of the Act;
- e) section 5(2) is mandatory whereas section 38(4) is permissive;
- f) on the proper construction of the Act (in particular, sections 5(1), 5(2), 16(1), 16(7), 30A(1), 33 and 38(2)), the Commission is obliged to take into account the public interest in:
 - catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry in the State; and
 - facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State.

² [2013] WASCA 227

³ *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson & Gaudron JJ). If the statute provides no positive indication of the considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of 'the public interest' will ordinarily be confined only by the scope and purposes of the statute.

- 45 Pursuant to section 73(10) of the Act, an objector bears the burden of establishing the validity of the objection. Pursuant to section 74(1) of the Act, such objection can only be made on the grounds that:
- a) the grant of the application would not be in the public interest; or
 - b) 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; or
 - c) if the application were granted:
 - undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or
 - the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened; or
 - d) the grant of the application would otherwise be contrary to the Act.
- 46 Each application must be considered on its merits and determined on the balance of probabilities pursuant to section 16 of the Act. However, it is often the case when determining the merits of an application that tension may arise between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services. When such circumstances arise, the licensing authority needs to weigh and balance those competing interests.⁴

Determination

- 47 Having regard to all of the materials submitted in support of the application and submissions made on behalf of the applicant, it is apparent the primary basis upon which the applicant has contended the application should be granted is that it will allow a one-stop shopping experience for those persons who attend the Woolworths supermarket to purchase their groceries, that it will offer a greater range of liquor products and that Northam is a growing town that will require more businesses to service a growing population.
- 48 In *Woolworths Ltd v Director of Liquor Licensing*⁵ Buss JA stated that, ‘...the Commission overlooked the notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance,

⁴ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258

⁵ [2013] WASCA 227

especially to working people, and that this social fact is reflected in the development of district and regional shopping centres. See *Woolworths Ltd v Drase Coosit Pty Ltd*⁶ and also *Liquorland (Australia) Pty Ltd v Hawkins*.⁷

- 49 The Commission recognises that one-stop shopping is a factor to be taken into account in the consideration of an application; however, there may be other factors that are given greater weight in the determination of an application of this nature.
- 50 In this case, there is a significant body of evidence that there is harm and ill-health in existence in the Northam community due to the use of liquor. There are also a number of at-risk groups which need to be considered in determining this application. The evidence provided by the various parties, particularly the EDPH, Police, MCAY and CCWS irresistibly leads to a conclusion that there is harm and ill-health caused to people by the use of liquor in the Northam community. Counsel for the applicant addressed the evidence of each intervener and objector in ultimately submitting that, 'there is considerable doubt as to the evidence upon which the delegate found that there was a greater than usual level of alcohol related harm within Northam.' Notwithstanding that submission, the Commission has concluded that the collective weight of the evidence confirms that there is a significant level of alcohol related harm in the relevant locality.
- 51 Where harm and ill-health is a relevant factor in the consideration of an application, the approach that the Commission must adopt is that outlined by His Honour Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*.⁸ Based on that decision, the Commission is required to:
- a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
 - b) make findings about the likely degree of harm to result from the grant of the application;
 - c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
 - d) weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the licence.
- 52 In the context of this application, the Commission makes the following findings:
- a) There is an existing level of harm and ill-health in Northam due to the use of liquor. This is based on a consideration of the following evidence:

⁶ [2010] SASC 13; (2010) 106 SASR 146 [55] (Kourakis J).

⁷ (1997) 16 WAR 325

⁸ [2015] WASC 208

- alcohol related hospitalisations and deaths in Northam in the Northam Statistical Area 2;
- evidence of the Regional Manager of the Wheatbelt Community Alcohol and Drug Service (“WCADS”), which was attached to the EDPH intervention;
- the objection lodged by Dr Kevin Christianson, a medical practitioner who has worked in Northam for 28 years and who notes that he has seen ‘an increased number of alcohol related problems in my General Practice’;
- the Northam Shire Community Safety and Crime Prevention Plan 2011-2015, which was a direct response to issues within the Northam community, including anti-social behaviour related to alcohol consumption;
- statistical data in respect to alcohol related offences in the shire and suburb of Northam; and
- drink driving data for the period 1 January 2012 to 31 December 2014.

The crime statistics provided by the Police establish that there is a significant level of alcohol related harm in the Northam community in the period between 1 October 2013 and 30 November 2014. That statistical data combined with the anecdotal evidence of service providers working within the Northam community is significant evidence that must be taken into account.

As the Commission has previously noted, ‘whilst comparisons may sometimes be useful...it is the actual level of harm or ill-health in the relevant locality that is of significance.’⁹ In this case, the comparison in statistics with other areas is of limited assistance. The fact that almost one in four offences is in some way alcohol related and in excess of half of all assaults is in some way alcohol related is evidence that there is a significant issue with alcohol related harm in the Northam community.

- b) The granting of the application would increase the availability of liquor within the Northam community and would potentially result in the lowering of prices by licensees. As a specialist Tribunal, the Commission is entitled to draw an inference that there is a likelihood that such a scenario may occur, particularly where the granting of the licence would result in four retailers selling packaged liquor within a short distance of each other. The Bottlemart Drive-Thru is 400m from the proposed licensed premises, the Cellarbrations at Howletts is 1km from the proposed licensed premises and the Liquor Barons store is 240m from

⁹ *Kununurra Liquor Pty Ltd v Executive Director of Public Health and Others* LC09/2016 at [66]

the proposed licensed premises. There are also three hotels that are licensed to sell packaged liquor, with the Riverside Hotel located 550m from the proposed licensed premises, the Commercial Hotel 70m from the proposed licensed premises and the Duke's Inn 1.4km from the proposed licensed premises. These stores would be servicing a population of approximately 6500-7000 people.

If such a scenario did eventuate, the Commission considers that it would be likely that there would be an increase in the risk of harm as consumers, particularly those in "at-risk" groups, would be able to purchase more liquor and thereby consume more liquor. There is a likelihood that this would increase harm to the health of such persons and there would be an increase in associated harm, such as domestic violence, drink driving and anti-social behaviour. This finding is made notwithstanding the good reputation of the applicant and the attempts that would be made by the applicant to minimise such harm.

Even if the Commission were wrong in predicting that there would be a lowering of prices and a consequent increase in harm and ill-health, there is a body of evidence of a correlation between an increase in outlet density and an increase in alcohol related harm referred to in the materials submitted by the EDPH. The Commission accepts this evidence in respect to outlet density notwithstanding the criticisms made by the applicant of this evidence and considers that an additional liquor store in a town with a population of 6500-7000 people gives rise to a significant risk that there will be an increase in harm and ill-health due to the use of liquor.

- c) In a community in which there is a significant amount of evidence of an existing level of harm or ill-health due to the use of liquor, the Commission considers that the risk of an increase to the existing levels of such harm would be unacceptable. The Commission considers that the risk of an increase in such harm if the application were granted is a real risk as opposed to a hypothetical possibility.
- d) In this case the primary object of the Act to minimise harm or ill-health caused to people or any group of people due to the use of liquor outweighs the object of catering for the requirements for liquor and related services. The risks associated with the granting of the application are simply too great when weighed against the positive aspects of the application, which include convenience, competition and greater choice of products.

53 Counsel for the applicant submitted that, 'there is considerable doubt as to the evidence upon which the delegate found that there was a greater than usual level of alcohol related harm within Northam. In addition, and most significantly, there is virtually no evidence before the Commission to support a finding that

the application would, if granted, increase the level of such harm at all, let alone to inappropriate levels.¹⁰

- 54 In Executive *Director of Health v Lily Creek International Pty Ltd & Others*¹¹ Ipp J stated that, ‘whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in *Malec v JC Hutton Pty Ltd*, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.’¹²
- 55 The Commission is entitled to draw inferences from evidence and notorious facts. In this instance, the academic literature in respect to the effects of outlet density, anecdotal evidence of service providers and the increase in competition that would result in the granting of the licence are a sufficient basis to draw a logical conclusion that there is a significant likelihood that the granting of the licence will result in an increase in harm and ill-health to those who use liquor in a community where there is already a significant level of such harm and ill-health.
- 56 It should also be noted that there are a number of “at-risks” groups within the locality. Some of these groups were identified in the submissions forwarded on behalf of the licensee objectors and include:
- a) WCADS (Holyoake Northam);
 - b) Waminda House Women’s Refuge;
 - c) Alcoholics Anonymous;
 - d) Northam Recovery Centre operated by Fresh Start.
- 57 As is noted in the Department of Racing Gaming and Liquor policy document relating to Public Interest Assessments and what constitutes an “at-risk” group, ‘there are a range of groups that may be more vulnerable to the impact of alcohol. Examples of these groups have been identified under the Drug and Alcohol Interagency Framework for Western Australia 2011-2015 and may include:
- a) children and young people;
 - b) aboriginal people and communities;
 - c) people from regional, rural and remote communities;
 - d) families;
 - e) migrant groups from non-English speaking countries;
 - f) people in low socio-economic areas;
 - g) mining communities or communities with a high number of itinerant workers; and/or
 - h) communities that experience high tourist numbers.

¹⁰ p.20 of written submissions dated 6 May 2016

¹¹ (2000) 22 WAR 510

¹² *supra*, at 516

58 Those persons who utilise the services of the four named service providers would fall within the category of "at-risk" persons. Two organisations deal directly with the harmful effects of alcohol (Holyoake and Alcoholics Anonymous), one deals with the effects of addiction (Fresh Start) and one deals with people who are the victims of domestic violence, which is often linked to alcohol abuse (Waminda House).

59 The failure to identify these service providers and their proximity to the proposed licensed premises impacts upon the assessment of the cogency of the evidence (particularly the PIA) relied upon by the applicant and is a significant basis upon which evidence that was submitted by the interveners and objectors has been preferred. The statement at paragraph 1.42(g) of the PIA that, "there are no potentially sensitive facilities located near the BWS store; that: (a) have clientele that could be attracted to or offended by the BWS store; or (b) are particularly attractive to the at-risk groups identified by this document" is blatantly wrong and shows a failure to understand the issues relating to alcohol within the relevant location.

60 Having regard to the totality of the evidence, the Commission is not satisfied on balance that the applicant has discharged the onus prescribed by section 38(2) of the Act that the granting of the licence is in the public interest. The benefits of one-stop shopping and an increase in the availability of liquor products are outweighed by the likelihood of an increase in harm and ill-health due to the use of liquor if the application were granted. Further, the suggestion of a significant increase in the population as justifying an additional licensed premise in the town of Northam is not borne out by the evidence.

61 Given that the applicant has not discharged its onus, there is no need to consider whether each or all of the objectors have made out their objections. If it were necessary to undertake that task, the Commission would have been satisfied on balance that the granting of the application was not in the public interest for the reasons relating to harm and ill-health that have already been referred to in detail.

Orders Made

62 Pursuant to section 25(4)(a) of the Act, the decision of the delegate of the Director to refuse the application is affirmed.

SEAMUS RAFFERTY
CHAIRPERSON