

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

**Applicant:** JB Foods Pty Ltd  
*(Represented by Mr Michael Hotchkin of Hotchkin Hanley Lawyers)*

**First Intervener:** Commissioner of Police  
*(Represented by Mr John Carroll of the State Solicitor's Office)*

**Second Intervener:** Chief Health Officer  
*(Represented by Mr John Carroll of the State Solicitor's Office)*

**Commission:** Mr Nicholas van Hattem (Deputy Chairperson)  
Ms Elanor Rowe (Member)  
Mr Tony Di Francesco (Member)

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

**Premises:** Karratha Cellars  
Tenancy 4, Tambrey Village Shopping Centre, Nickol, WA, 6714

**Date of Hearing:** 13 March 2023

**Date of Determination:** 30 October 2023

**Determination:** The Application is granted subject to conditions at paragraph 124 of the determination.

**Authorities referred to in Determination:**

- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017)
- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2020] WASCA 157
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366
- *O'Sullivan v Farrer* [1989] HCA 61
- *Sunseasons Pty Ltd v Director of Liquor Licensing* (LC 21/2019)
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227

## **SUMMARY**

- A.** The public interest condition as set out in section 38 of the Act is satisfied.
- B.** The Commission holds that 'locality' in section 36B(4) of the Act is the area geographically close to the premises, being determined based on the circumstances of the case, including with reference to the presence of a community in the area of the proposed site, the geographical spread of that community and topographical features.
- C.** In this case, for the purposes of section 36B(4), 'locality' is found to be the area depicted in Attachment 2 of the Rowe Report as submitted by the Applicant.
- D.** The consumer requirement condition as set out in section 36B(4) of the Act is satisfied.
- E.** The Application is granted subject to the following conditions:
  - a) Spirits, liqueurs and fortified wines are to be stored behind the point of sales counter and are only to be accessible by staff.
  - b) The licensee is to have and maintain a CCTV system throughout the licensed premises (including delivery areas) in accordance with the policies of the Director of Liquor Licensing. Specifically, the video surveillance system must:
    - i. comply with the "Minimum Standards – Closed Circuit Television (CCTV) Security System" policy as amended;
    - ii. record continuous images on any day that the venue trades from the commencement of trade until 1 hour after trading ceases; and
    - iii. retain recorded images for a period of twenty eight (28) days available for viewing or removal upon request by police or other persons authorised by the Director.
  - c) A range of zero, low and mid-strength alcohol beer is to be available.
  - d) Signage is to be displayed within the store relating to secondary supply of alcohol, not serving juveniles and not serving intoxicated persons.
  - e) The sale of cask wine is prohibited.
  - f) The sale of beer in glass bottles of 750ml or more is prohibited.
  - g) The sale of fortified wines in containers greater than 1 litre is prohibited.
  - h) Unaccompanied juveniles are not permitted to enter or remain on the licensed premises.
  - i) The liquor store is to be a separate tenancy to the IGA supermarket, meaning the entire liquor display and sale area must be physically and visibly separated from the food/grocery display and sale area by solid non-transparent barricading and an entry/exit door or gate.
  - j) The liquor browse/display area is to be closed off when not open for trade.

- k) The advertising or promotion of liquor (including signage from within the supermarket indicating liquor is available) on the external façade of the premises is prohibited, except for directional or Premises Name signage.

## **BACKGROUND**

1. This matter concerns an application (“**Application**”) by JB Foods Pty Ltd (“**Applicant**”) for the conditional grant of a liquor store licence for premises proposed to be known as Karratha Cellars (“**Proposed Premises**”) located at the Tambrey Village Shopping Centre in Karratha.
2. On 12 August 2019, the Applicant lodged the Application for the conditional grant of a liquor store licence for the Proposed Premises.
3. The Director of Liquor Licensing (“**Director**”) referred the matter to the Commission under section 24 of the *Liquor Control Act 1988* (“**the Act**”).
4. Before the Application was determined by the Commission, the Act was amended by section 36B(4) being inserted.
5. The Commission conducted a hearing on 25 May 2021.
6. On 28 October 2021, the Supreme Court delivered its decision in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (“**Liquorland Decision**”).
7. The Commission invited parties to make written submissions on the impact of the Liquorland Decision.
8. On 12 April 2022, the Commission refused the Application.
9. On 3 May 2022, the Applicant appealed the Commission’s decision.
10. On 23 September 2022, following the filing of a minute of consent by the parties, the Supreme Court allowed the appeal, and set aside the Commission’s decision, remitting the Application to the Commission differently constituted.

## **SUBMISSIONS**

11. The documents filed with the Commission in these proceedings prior to the hearing are set out in the attached index at Appendix 1. All documents have been considered by the Commission. Reference to specific documents is set out below.
12. Further to that index, the following documents have been received and considered:
  - a) Applicant’s Submissions dated 20 February 2023.
  - b) Statutory Declaration of Steven Charles Perry dated 17 February 2023.
  - c) First and Second Interveners’ Submissions dated 20 February 2023.
  - d) Updated alcohol-related harm and ill-health data from the Second Intervener.
  - e) Offence data from 2019 to 2021 from the First Intervener.

- f) Applicant's responsive submissions dated 7 March 2023.
  - g) Interveners' reply submissions dated 7 March 2023.
13. The matter was heard on 13 March 2023.
  14. At the hearing, the Applicant provided a letter from the Director of Liquor Licensing dated 16 December 2022, following inquiries under section 64 of the Act. In summary, at that time, the Director determined not to impose any additional restrictions in Karratha.
  15. The Interveners also handed up documents referred to in the Pracsys report.
  16. At the Hearing, the Commission invited the Applicant to provide an updated report from its consultants in relation to matters raised in the hearing.
  17. On 14 April 2023, the Applicant provided:
    - a) a further report from Pracsys, received by the Applicant on 6 April 2023, responding to queries raised by the Interveners at the hearing; and
    - b) a supplementary report from the Rowe Group dated 14 April 2023.
  18. On 5 May 2023, the Second Intervener provided further reply submissions, and confirmed the First Intervener made no further submissions.
  19. The Commission has also had access to an audio recording of the oral hearing.

## **ISSUES**

20. When the hearing commenced, the Commission invited the parties to address their submissions in relation to two key issues, being firstly, the question of public interest, and secondly, the question of section 36B(4) including the definition of locality in this case.

### **Parties' submissions on locality**

21. The Applicant referred to the Liquorland Decision, in which Justice Archer held:
  - a) at [182], that 'locality' is intended to connote the concept of 'neighbourhood', and means the geographical area surrounding the proposed site;
  - b) at [181], that 'locality' was not intended to equate to the areas from which consumers would come; and
  - c) at [185], that the shape of the locality is influenced by topographical features and the areas from which the site could be accessed reasonably easily on foot or push-bike.
22. The Applicant submitted that the appropriate locality in this case is an area defined in the Rowe Report. It is depicted in Attachment 2 (reproduced below), and described as the area formed by the northern boundary of the existing urban area on the north side of Dampier Road (bounded by Balmoral Road northern leg); the southern boundary of the Baynton precinct (being bounded at its southern extremity by the significant change in contour to the low rise hills to the south); the major water course to the west (unnamed creek line); and the

smaller (but significant in terms of a physical barrier) water course to the east (extension of Millars Well Oval).



23. The Applicant's submission is based on the following matters (identified at [32] of the Applicant's Primary Submissions), summarised from the Rowe Report:
- a) There are topographical features which naturally define the area surrounding the premises, including a significant change in contour to the low-rise hills to the south, a major water course to the west and a smaller water course to the east.
  - b) The planning framework identified the Nickol/Baynton area as a precinct for a community of residents to build and live in that area, hopefully for a long time, which can be contrasted with different planning of the City Centre.
  - c) The identified area had a particular character, with its planned provision of multiple destinations and activity centres.
  - d) The road network of the Karratha townsite was not conducive for routing traffic within its precincts. To traverse the Karratha townsite through the internal road network (from east to west) is complex. The cell like divisions of the Town (based around the civil engineering solution of the major drainage swales) is not conducive to internal travel over the length of the Town.
  - e) The effect is to elongate urban development in separate parts of Karratha.
24. The First Intervener submitted:
- a) The proposed "locality" appears to be less than 1 km in radius.
  - b) The Rowe Report is of no probative value to the Commission, because the author identified "locality" from a town planning perspective, not from the perspective of the meaning of "locality" under section 36B of the Act.

25. At the hearing, the Commission expressed a tentative view that the Rowe Report was focused on town planning methodology and granted leave for the Applicant to file a supplementary report.
26. The First Intervener was granted leave to make any responsive submissions to the supplementary report but did not file any responsive submissions.
27. There was discussion at the hearing, between the parties and the Commission, that following the Liquorland Decision, some useful community indicia of “locality” under section 36B were the existence of community infrastructure including schools, sporting facilities and places of worship.

### **Supplementary Rowe Report**

28. The Supplementary Rowe Report appears to be similarly focused on town planning considerations, but also identifies the following items of community infrastructure which are physically located in the Applicant’s proposed locality:
  - a) The Tambrey Neighbourhood Centre (i.e., the location of the Proposed Premises) is a modern shopping centre building that was constructed in 2020. It provides for the daily to weekly household shopping needs and other convenience services for the local community. This includes an established IGA supermarket, pharmacy, petrol station and fast food outlets. The Centre also provides an opportunity for all residents in the community to mingle whilst undertaking daily or weekly shopping.
  - b) Aside from the Tambrey Neighbourhood Centre and surrounding housing, there are other community focal points including parks, sporting complexes, schools and a pub (the Tambrey).
  - c) The sporting complexes, Tambrey Oval and Baynton West Park are large, reticulated sporting ovals that provide opportunities for the community to engage in sporting activities and socialise. These would service the community within the proposed locality and also draw people from elsewhere in Karratha.
  - d) The Tambrey pub provides for socialisation, and likely draws people from within and outside the locality. The pub has been renovated with high quality finishes and a large beer garden and would likely attract family-friendly clientele.
  - e) The Tambrey Primary School and Baynton West Primary School are in the Applicant’s proposed locality. The author says *“it is considered that these primary schools do not necessarily contribute to defining the character of the wider locality and more so the neighbourhood cells in which they are located and serve. Notwithstanding, these schools are self-contained within the locality itself in that they serve the western neighbourhoods of Karratha, and not the wider Karratha area”*.
  - f) There are several large parks within the Applicant’s proposed locality, including Baynton West Park, Nickol West Park and the Balyarra Park. They would likely serve a neighbourhood and/or district function and be mostly utilised by the locality’s community rather than the wider Karratha area. There are similarly sized parks in other areas of Karratha, however these are generally not developed to the same high standard.

29. At the hearing, counsel for the Applicant said that there were places of worship in the proposed locality. The Supplementary Rowe Report does not address any places of worship.
30. The Public Interest Assessment identified the Karratha Baptist Church as being 1.51 km from the Proposed Premises (see PIA at p. 85). This appears to be within (or very close to) the boundary of the Applicant's proposed locality.

### **Parties' Submissions on Public Interest**

#### *Applicant's submissions*

31. The Applicant submitted that the Application is in the public interest within the meaning of section 38 of the Act.
32. The Applicant's submission is based on the following matters, said to be the relevant considerations under section 5(1)(c) of the Act:
  - a) It will cater for the requirements of consumers of liquor, by providing the convenience of one-stop shopping and provide a more diverse range of products, with an emphasis on a professional level of service.
  - b) It will promote the development of the liquor industry, the tourism industry and other hospitality industries by stocking wines made in WA not available in Karratha, helping those producers; provide employment opportunities for those who wish to be employed in the tourism or hospitality industries; and appeal to an up-market tourist market for people familiar with the Applicant's operations in Perth and Rottnest Island.
33. Against those positive matters, the Applicant acknowledged "negative aspects" of any supplied liquor, with reference to section 5(1)(b) of the Act.
34. The Applicant adopted the four-step test in *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 ("**Carnegies Decision**"), and made the following submissions (at [70] of the Applicant's Primary Submissions):
  - a) By reason of the demographic constitution of the locality, it is unlikely that the residents in the locality suffer high existing levels of harm and ill-health due to the use of liquor.
  - b) There is unlikely to be any degree of harm, let alone to a significant degree, resulting from the grant of this Application because of the location of the Proposed Premises; the more expensive products offered for sale; and measures to be taken to guard against excessive purchases of liquor.
  - c) Given the "at-risk groups" identified by the Interveners (said to be FIFO workers and Aboriginal people) live in places closer to cheaper liquor outlets, then it is unlikely that the grant of this Application would add any degree of harm at all to the existing degree of harm suffered by people outside the locality.

#### *Interveners' Submissions*

35. The First Intervener submitted that, to the extent that the evidence establishes there is a consumer requirement for liquor and related services, the strength of that submission is



modest, because the evidence relates to one-stop shopping and a modest increase in convenience, but there are a number of existing packaged outlets in Karratha.

36. Both Interveners submit:
- a) There are pre-existing levels of alcohol-related harm in the locality and such harm is already at an unacceptable level.
  - b) There are vulnerable and at-risk groups within Karratha who are more susceptible to alcohol-related harm and may be adversely impacted by an additional packaged liquor outlet.
  - c) Increased availability of packaged liquor within Karratha has potential negative impacts upon mental health outcomes.
  - d) Research supports a link between the availability of liquor and liquor-related harm and ill-health.
37. In relation to existing levels of harm, the Interveners rely on the original and supplementary evidence provided by the Commissioner of Police, showing for the 2021 calendar year:
- a) Alcohol-related offending in Karratha per 1000 persons was 4.5 times the metropolitan rate, approximately equal to the Port Hedland rate and around 0.24 times the South Hedland rate.
  - b) Alcohol-related family assaults in Karratha per 1000 persons was in excess of 6.6 times the metropolitan rate, 1.4 times the Port Hedland rate and 0.26 times the South Hedland rate.
38. The Interveners submit it is open for the Commission to find that the existing rates of alcohol-related offending in Karratha establish that the rates of alcohol-related harm in Karratha are unacceptably high in accordance with the findings of the Commission in *Sunseasons Pty Ltd v Director of Liquor Licensing* (LC21/2019) (“**Sunseasons**”).
39. The Interveners also submit evidence which demonstrates:
- a) For the period of 2011 to 2014, total hospitalisation age-standardised rates for all alcohol-related conditions for residents within the Karratha SA2 statistical region were reported to be higher than that of the State rate. The alcohol hospitalisation data also shows that within the Karratha SA2 statistical region from 2014 to 2018 there were three specific alcohol-related conditions that were significantly higher than the State rate for all persons, including alcoholic liver disease and other digestive system diseases (1.7 times), motor vehicle accident injuries (1.4 times) and assaults / abuses (2.1 times). From 2015 to 2019, the hospitalisation rate for alcohol-related conditions within the Karratha SA2 statistical region remained higher than the State rate (1.16 times).
  - b) There is already a high policing demand in the area immediately surrounding the proposed store. The Officer in Charge of Karratha Police Station stated that Nickol (a suburb close to the Proposed Premises) is one of the most problematic policing areas in Karratha.

- c) Fly in fly out (FIFO) workers are an at-risk group with reported high levels of alcohol consumption and risky drinking behaviours.
  - d) Aboriginal people are an at-risk group, representing 10.1% of the Karratha population (compared with 3.1% in the State), and that Indigenous communities in the Karratha / Roebourne / Wickham areas suffer greatly from intergenerational trauma, where excessive alcohol consumption is a contributing factor.
  - e) The Pilbara has experienced numerous deaths by suicide in recent years, with five suspected suicides occurring in Karratha in the 2018 Christmas period alone. Whilst suicide is the result of a complex interaction between biological, psychological, social, cultural and environmental factors, alcohol use is a risk factor in suicide.
  - f) The Second Intervener's data as to treatment episodes for Mental Health Commission funded treatment agencies evidences that alcohol is identified as a drug of concern in over half of the treatment episodes for people residing in the suburbs of Karratha, Nickol, Baynton, Pegs Creek, and Millars Well (55% between the years 2016 to 2019 and 63% between the years 2019 to 2022). The data demonstrates that the portion of treatment episodes where alcohol is identified as a drug of concern has generally been increasing from 2016 to 2022. Between 2016/17-2021/22, four of the five suburbs in the locality had a higher rate per 100,000 of active treatment episodes where alcohol was a drug of concern when compared to the State rate.
40. In relation to the link between liquor availability and liquor-related harm, the Interveners submit:
- a) Access to, and the convenience of, obtaining alcohol make it difficult for those who drink at risky levels to avoid drinking or to reduce the amount consumed.
  - b) Research has demonstrated that reduction in hours of trade, days of sale, numbers of alcohol outlets, and limitations on access to alcohol are associated with reductions in both alcohol use and alcohol-related problems.
  - c) Increased availability of packaged liquor has a positive association with a number of harms which occur away from licensed premises, including rates of assault, domestic violence, chronic disease, and heavy episodic drinking.

*Pracsys Reports*

41. Prior to the hearing, the Applicant provided a retail economics analysis from Pracsys, dated March 2021. The report presents findings on topics including locality delineation, consumer requirements, and the public interest, particularly impact on at-risk groups and inducement of additional alcohol on demand.
42. In relation to the public interest, the report says in summary:
- a) the Proposed Premises is unlikely to increase the availability of packaged liquor products for at risk-groups in the locality; and
  - b) the Proposed Premises is unlikely to induce additional demand for packaged liquor or contribute to alcohol abuse within the locality.

43. In relation to FIFO workers, the Pracsys analysis indicates the Proposed Premises would be an average of 5.7km away from identified FIFO accommodation sites, meaning it would be the fifth closest of all bottle shops.
44. In relation to Aboriginal people, the Pracsys analysis indicates that, if the Proposed Premises was approved, comparing the proportion of Aboriginal people resident in the catchment of each retailer, the Proposed Premises would have the lowest percentage of Aboriginal people, with 9.2% of the population. The Pracsys author concludes as such, the proposed Karratha Cellars will not increase the availability of packaged liquor products for at-risk Aboriginal persons within the Applicant's proposed locality [60].
45. At the hearing, counsel for the Interveners raised a number of issues with the Pracsys analysis and agreed to provide detail of those matters. The Commission granted leave for the Applicant to file a supplementary report.
46. The Supplementary report is dated April 2023 and addresses the following matters:
  - a) Matter 1 – Paragraph 21 and Figure 6: Craft Beer / Packaged Premium Alcohol.
  - b) Matter 2(i) – (said by the parties to be a minor difference in categorisation which does not affect the conclusions).
  - c) Matter 2(ii) – NDSF Survey Data – Single Occasion Risks.
  - d) Matter 3 – Paragraph 62 and Footnote 15 – Density of alcohol outlets.

*Matter 1 - Craft Beer / Packaged Premium Beer*

47. The Interveners observed that the data in Figure 6 comes from Table 3.7 from the NDSH Survey 2019, which shows the main types of alcohol consumed of persons in age groups, and that the data does not refer to 'craft beer' or 'packaged premium alcohol'.
48. In the Supplementary report, the author states that that observation is correct:

*"In our analysis, there was a further data source used that correlated the beer demand data from the NDSH Survey with the market share of craft beer consumption by age. A national consumer survey (sample size 17,000) by Statista in 2020 shows that the greatest share of craft beer consumption is in the 30-39 year age group, which is also the most common adult age group in the Localities populations"* (see Pracsys report Figure 5).
49. The Interveners submit that the Statista report shows that the greatest share of craft beer consumption is in the 30–39 year age group. The data does not provide any information on the popularity of craft beer in comparison to other beverages. As the Statista data does not compare consumption of craft beer to other alcoholic beverages, the data relied upon by Pracsys (being the NDSHS data and Statista data) does not support the conclusion reached in the Pracsys report at [21] that *"the household age profile and demographic structure of the Localities tends to demand a higher proportion of premium packaged alcohol products such as bottled wine and craft beer and a lower proportion of spirits, liquors and cask wine"*.

*Matter 2(ii) – NDSH Survey Data – Single Occasion risks*

50. The Interveners observed that NDSH Survey data (Table 3.58) also includes single occasion risks, on which the Pracsys report does not report. The data is important because it shows that couples with children are at a higher risk of single occasions risks than couples without children in relation to 'yearly not monthly' and 'at least monthly' single occasion risk.

51. In the Pracsys supplementary report, the author states:

*"Pracsys selected the lifetime consumption variable because it is a standardised way to compare data over multiple socio-demographic segments (ie: consumption of standard drinks per day). The single occasions data (which uses a metric of four standard drinks per session) is problematic because the temporal categories are so broad ('yearly not monthly' and 'at least monthly') that precise insight into consumption is difficult. Choosing the lifetime consumption variable (average of more or equal/less than two standard drinks per day) is the more useful indicator of regular drinking behaviour associated with harm."* (At p3).

52. The Interveners submit:

- a) The author of the Pracsys supplementary report gives the opinion that *"Choosing the lifetime consumption variable... is the more useful indicator of regular drinking behaviour associated with harm"*. This is not supported by the evidence nor locality data for short-term harm. It also misunderstands the different nature and relevance of the risks presented by both single occasion and lifetime risk.
- b) Single occasion risk are risks that arise directly from single occasions of consumption. Lifetime risk relates to risks arising from consumption over time. They may be different risks, such as health conditions arising from repeated consumption of liquor above recommended guidelines over time. They are different types of risks. It is therefore incorrect to say only one of the indicators is the most useful.
- c) The National Health and Medical Research Council (NHMRC) Guidelines (2009, as used in the report) are clear that consuming more than four standard drinks on a single occasion increases a person's risk of alcohol-related harm. The NHMRC Guidelines do not suggest that single occasion risk is a less useful indicator than lifetime risk; it is an important component of overall alcohol-related harm.
- d) Further, in primary submissions, data was presented by the Second Intervener which demonstrated short-term harm is a relevant issue of concern for the locality:
  - i) Self-reported consumption at risk of short-term harm has been higher than the State since 2016.
  - ii) Two of the three alcohol-related conditions for hospitalisations that were significantly higher than the State rate were in relation to short-term harms (motor vehicle accident injuries and assaults/abuses).
- e) The Pracsys author's inability to understand the importance of the different indicators of risk itself demonstrates that the Commission should be slow to give any weight to the report at all in respect of issues relating to harm and ill-health, as the author has not demonstrated sufficient expertise to be giving an expert opinion on the topic.

*Matter 3 – Paragraph 62 and Footnote 15 – Density of alcohol outlets*

53. In the Pracsys supplementary report, the author says that a careful reading of the reference cited in footnote 15 (Kavanaugh) shows that there is a difference between the density of alcohol outlets and the proximity of residents to alcohol outlets as potential determinants of harmful drinking behaviours.
54. Regarding outlet density, Kavanaugh (p1788) further noted:
- “When outlet density was fitted as a categorical variable, the increased risk of drinking at levels associated with short-term harm at least weekly was observed when there were three to four, and eight or more outlets within a 1-km network area. An increased risk of drinking at levels associated with harm at least monthly was observed when there were five or more outlets. We therefore find evidence to suggest that when the number of outlets within a 1-km network distance is eight or more, the risk of drinking at levels associated with short-term harm (weekly and monthly) is increased.”*
55. The Interveners observe that the Pracsys report and responsive report have relied on a single outlet density study to conclude no harm will come from the Proposed Premises. The Interveners submit that limited weight should be given to the conclusion based on the findings in Kavanaugh because although the current evidence regarding the impact of alcohol outlet density on levels of consumption and alcohol-related harm is mixed, systematic reviews have concluded, despite the mixed results and limitations in study methodologies, that alcohol outlet density is likely to be positively associated with alcohol consumption and harm. It is therefore reasonable to suggest that a new outlet with the potential to increase the volume of alcohol available for consumption in a community would more likely be associated with increased consumption and harm than decreased consumption and harm.

**Parties’ submissions on section 36B(4)**

56. The Applicant referred to customer surveys conducted and submitted the following in relation to consumer requirements (Applicant’s Submissions at [50]):
- a) Currently, one-stop shopping in Karratha is only available at the Karratha City Shopping Centre.
  - b) There is no one-stop shopping at the locality because the Tavern cannot reasonably meet that requirement.
  - c) The Proposed Premises would increase pricing competition.
  - d) The well-managed operation of the Proposed Premises, in a new and secure setting, will provide an up-market offering to consumers in the locality, with increased choice.
57. The First Intervener’s principal submission is that it is open for the Commission to find that the relevant “locality” for the purposes of section 36B(4) is the whole of Karratha. Applying that analysis, there is no basis to say that the Applicant has discharged its onus in relation to section 36B(4).
58. At the hearing, counsel for the First Intervener accepted that if the Commission determines that the proper locality is the area proposed by the Applicant, it would be open for the Commission to find that there were unmet consumer requirements in the locality (at 1:58:46 of the audio recording of the hearing).

## **LEGAL AND STATUTORY FRAMEWORK**

59. Section 16 of the Act provides that the Commission:
- a) may make its determination on the balance of probabilities (subsection (1)(b)(ii)); and
  - b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply (subsection (7)(a)); and
  - c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms (subsection (7)(b)).
60. The failure to refer to any specific evidence in written reasons does not mean that the evidence has not been considered: *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017).
61. For the purposes of the licence sought by the Applicant:
- a) the Applicant must satisfy the licensing authority that granting the Application is in the public interest (section 38(2)); and
  - b) the licensing authority must not grant the Application unless satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated (section 36B(4)).

### **Section 38 - Public Interest Condition**

62. The expression “in the public interest,” when used in a statute, imports a discretionary value judgment: *O’Sullivan v Farrer* [1989] HCA 61.
63. When determining whether an application is in the public interest, the Commission must take into account:
- a) the primary objects of the Act set out in section 5(1):
    - i) to regulate the sale, supply and consumption of liquor; and
    - ii) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
    - iii) 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; and
  - b) the secondary objects of the Act set out in section 5(2):
    - i) 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; and

- ii) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - iii) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of the Act.
64. Section 38(4) of the Act provides that the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include:
- a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor (subsection (a));
  - b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated (subsection (b));
  - c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises (subsection (c)); and
  - d) any other prescribed matter (subsection (d)).
65. No 'other ... matter' has been prescribed pursuant to section 38(4)(d).
66. Where section 5(1)(b) of the Act is relevant, it is necessary for the Commission to follow the steps articulated in the Carnegies Decision (at [42] – [43] per Allanson J). The Commission must:
- 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 that may 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 other relevant factors to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the application.
67. It is not sufficient for the Commission to simply reason that, where there is already a high level of harm in a particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol-related harm which is likely to result from the grant of the particular application. Those findings about the effect of the particular application must be the basis on which the Commission evaluates what is in the public interest: Carnegies Decision at [46].

#### Section 36B(4) - Consumer Requirements Condition

68. Section 36B(4) prohibits the licensing authority to grant an application for a packaged liquor licence unless it is satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated.

69. In the Liquorland Decision, Archer J said (at [74]-[75]):

*“I do not consider that the purpose of s 36B was to constrain the number of packaged liquor premises by sacrificing consumers' options to get liquor at a lower price and better quality. Rather, I consider that its purpose was to ensure that an additional licence would only be granted where such requirements could not reasonably be met by the existing premises (and in the context of there also being a Public Interest condition).*

*In my view, so long as s 36B(4) imposes a meaningful additional hurdle to the Public Interest condition, it will be consistent with, and promote, its purpose.”*

70. For the purpose of section 36B(4), the Commission must be satisfied that:

- a) there are ‘local packaged liquor requirements’ – being defined in section 36B(1) as “the requirements of consumers for packaged liquor in the locality in which the proposed licensed premises are, or are to be, situated”; and
- b) such ‘local packaged liquor requirements’ cannot reasonably be met by existing packaged liquor premises in the locality.

71. The phrase ‘requirements of consumers for packaged liquor’ in the definition of ‘local packaged liquor requirements’ in section 36B(4) of the Act is not limited to the physical item of packaged liquor (Liquorland Decision at [108]).

72. The phrase ‘cannot reasonably be met’ in section 36B(4) of the Act means “cannot sensibly or rationally be met” (Liquorland Decision at [131]).

73. The evidential and persuasive onus falls upon the Applicant for the grant of the licence to satisfy the licensing authority as to the above.

74. To properly contemplate the first limb of section 36B(4) of the Act, the Commission must make a finding as to the ‘local packaged liquor requirements’ of consumers in the locality based on the evidence provided. This requires consideration of the interpretation of the ‘requirements of consumers’ and of the relevant ‘locality’ to be considered.

#### *Definition of locality under section 36B(4) of the Act*

75. The definition of locality was considered in the Liquorland Decision.

76. In the Liquorland Decision Archer J held ([181]) that:

*“In my view, the word ‘locality’ in s 36B denotes an area that surrounds, and is geographically close to, the location of the proposed premises (proposed site). I consider it was not intended to equate to the area(s) from which consumers would come”.*

77. Archer J identified a number of matters that were relevant in determining the proper construction of locality ([181] – [188])

- a) *“‘locality’ is intended to connote the same concept of neighbourhood. I consider that, in this context it means the geographical area surrounding the proposed site”* at [182].



- b) *“a retail catchment area could be extremely large, of wildly irregular shape and even made up of several non-adjointing areas. Describing such an area as a ‘locality’ would not be consistent with the ordinary meaning of that word”* at [182].
- c) *“By using the word ‘locality’, I consider that the legislature intended to capture the geographical area surrounding, and relatively close to, the proposed site, the ‘neighbourhood’ of the site”* at [184].

78. Archer J then went on to consider how locality should properly be determined ([185] – [188]).

79. In determining locality, Archer J held that there is no prescribed test:

*“it is impossible to prescribe a specific test to be applied or even an exhaustive list of the factors that will or may be relevant in the determination of the locality in any given case”* at [185].

80. However, Archer J did note some factors that may be considered:

*“This is not to say that locality will inevitably, or even usually, be a circular area within a particular radius of the proposed site. **The shape and size of the ‘locality’ may be influenced by topographical features** (including man-made features such as roads) **and the areas from which the proposed site could be accessed reasonably easily on foot or push-bike.** If there is a community in the area of the proposed site, the **geographical spread of that community** may also influence the shape and size of the ‘locality’”* at [184] (emphasis added).

*“the retail catchment area can be a relevant consideration for the purpose of determining locality”* at [188].

81. Locality is, therefore, to be the area geographically close to the premises being determined based on the circumstances of each individual case, looking to consider the topographical features and the areas the site would be accessed by people utilising various modes of transport.

## **DETERMINATION**

82. The Commission must be satisfied that the grant of an application is in the public interest pursuant to section 38 (“**Public Interest Condition**”), and that the *“local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated”* pursuant to section 36B(4) (“**Consumer Requirements condition**”).

### ***Public Interest Condition (s 38 of the Act)***

83. In making the determination, the relevant provisions of the Act have been considered, including the Public Interest Condition imposed by section 38.

84. In this regard, the Applicant has the onus of satisfying the Commission that the establishment of the proposed liquor premises would be in the public interest.

85. In determining the public interest for the purposes of the Act, the Commission has had regard to factual matters relevant to the objects of the Act set out in sections 5(1)-(2) and 38(4). Notably, such factual matters include the possible harm or ill-health that may be caused by the proposed premises and the positive or negative effects which the grant of the application would have upon amenity: *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 per Buss J at [49], [50], *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2020] WASCA 157 at [52], [173], [175], [184], [207], [231].
86. Further, the determination of public interest is not isolated from considerations of competition, convenience, product range and efficiency. This was confirmed by Archer J in the Liquorland Decision when her Honour held (at [106]) that such matters are relevant to both the Public Interest and Consumer Requirements Conditions.
87. The Applicant has presented consumer and economic evidence in favour of the view that the Proposed Premises would satisfy consumer requirements for convenience and competition and would provide an up-market liquor retail option particularly in the west side of Karratha.
88. On the other hand, the Interveners have presented persuasive evidence as to the high level of alcohol-related harm in Karratha.

*Findings as to the existing level of harm and ill-health in the relevant area due to the use of liquor*

89. First it is necessary to determine the relevant area. In the Carnegies Decision, the licensee submitted that the relevant area was (all of) “Fremantle”. In the present case, the Applicant submits that the relevant area is its proposed locality (at [70] of its primary submissions) although some regard should be had to Karratha as a whole (at [61] and [62]).
90. The Commission finds that the “relevant area” is the whole of Karratha, with a particular focus on the immediate surrounds of the Proposed Premises.
91. The existing level of harm and ill-health in the relevant area due to the use of liquor is very high.
92. The level of harm and ill-health is at a comparable level to the level described by the Commission in *Sunseasons* as unacceptable and requiring some form of intervention to reduce those levels (at [22] of *Sunseasons*).
93. The Applicant submitted (at [70] of its primary submissions) that “*by reason of the demographic constitution of the locality, it is unlikely that the residents in the locality suffer high existing levels of harm and ill-health.*”
94. This is not supported by the evidence. While not all of the statistics available are able to descend to neighbourhood detail, the evidence submitted by the Second Intervener does descend to neighbourhood detail.

95. Importantly, that evidence includes the following:

**Table 1: Rate and percentage of active treatment episodes for residents in the locality where alcohol was the primary (PDOC) or other (DOC) drug of concern compared to the State during the period 2016/17-2021/22**

Suburbs	Alcohol PDOC		Alcohol DOC	
	Rate per 100,000	(%)	Rate per 100,000	(%)
Baynton	207	(42%)	285	(58%)
Karratha	5,891	(37%)	7,471	(46%)
Millars Well	466	(53%)	593	(67%)
Nickol	327	(50%)	415	(64%)
Pegs Creek	748	(59%)	866	(68%)
State - WA	271	(38%)	370	(52%)

96. Contrary to the Applicant's submission, considering this data, the Karratha city centre (which is outside the proposed locality) has a level of alcohol being the primary drug of concern in active treatment episodes of 37%, close to the state average of 38%. Whereas suburbs in the proposed locality (Baynton, Millars Well and Nickol) all have statistics materially worse than the State average.
97. In *Sunseasons*, in response to the "unacceptable" level of harm, the Commission imposed restrictions on the sale of liquor (at [33]).
98. The Port and South Hedland liquor restrictions, effective 27 September 2019 are broader than the Karratha liquor restrictions (effective 8 October 2012).
99. Both restrictions:
- limit liquor store hours from 11am to 8pm;
  - prohibit liquor store sales on Sundays; and
  - prohibit glass bottles of beer in 750ml formats (king browns).
100. The Port and South Hedland liquor restrictions prohibit the sale of cask wine and fortified wine.
101. The Karratha restrictions allow cask wine of up to two litres, and fortified wine of up to one litre.
102. The Applicant proposes to abide by the Karratha Liquor Restrictions, the Pilbara Liquor Restrictions (where applicable), the resolutions of the West Pilbara Liquor Accord and any conditions imposed on the licence in the public interest: Application at [1.18], p. 5.
103. The Pracsys report says at page 13 that the Proposed Premises will not offer any cask wine products.
104. The Commission finds it is in the public interest to prohibiting the sale of cask wine at the Proposed Premises.

*The likely degree of harm to result from the grant*

105. The real issue in this Application is whether the increased availability of alcohol will result in an unacceptable increase in harm and ill-health to those in the locality.
106. There is already one packaged outlet in the immediate locality. There are other packaged outlets in the greater Karratha region.
107. The submissions of the Interveners are that if there is more alcohol for sale then there must be an increase in harm and ill-health arising from this. Further, at-risk persons are highly vulnerable and susceptible to alcohol-related harm and are acutely affected by fluctuations in alcohol prices.
108. It is always difficult to predict what may occur if a particular application is granted. It involves a prediction as to the likelihood that something may occur.
109. In respect to the harm occurring on or immediately around the Proposed Premises, the Commission finds that there may be an increase in harm and ill-health if the Application is granted due to the increased accessibility of liquor in the area.
110. However, the Commission is not satisfied that opportunistic access by way of the additional liquor outlet, the subject of this Application, would add any further significant degree of harm and ill-health in the locality.
111. Although the Commission has found that alcohol-related harm and ill-health exist within the locality and that the degree of harm may generally increase due to the granting of the Application, the Commission considers that it would not be at a level as to make it inappropriate to grant the Application.
112. The parties have identified two at-risk groups, being FIFO workers and Aboriginal people. The Commission accepts that these groups are vulnerable or at risk to alcohol-related harm or ill-health.
113. In the case of FIFO workers, and with regard to the Pracsys evidence of proximity of FIFO accommodation to liquor outlets (at paragraphs [53] – [56] of the Pracsys report), the Commission finds that the Proposed Premises would unlikely have a material impact on alcohol-related harm to FIFO workers.
114. In relation to Aboriginal people, contrary to the Applicant's submission, the Commission finds that there is a greater than State-average population in the immediate area surrounding the proposed premises.
115. The Applicant's submission was based on a "proximity assessment" (at paragraphs [55] – [59] of the Pracsys report).
116. The Pracsys report concludes that the Proposed Premises "will not increase the availability of packaged liquor products for Aboriginal persons" in the locality.
117. This in turn is based on an analysis of different outlets, and the percentage of people in the catchment area of each outlet who are identified by the Applicant as being Aboriginal people. In the catchment of the Proposed Premises, that figure is said to be 9.2% of the catchment area. The percentage is higher for each other (existing) outlet.

118. But the corollary of that analysis is, in the retail catchment area of the Proposed Premises, there reside a significant number of Aboriginal people, said by the Applicant to be at risk-persons, and the grant of the proposed licence would make alcohol more available (or more conveniently available) to that community (particularly in the suburb of Baynton).
119. The Commission finds that the grant of the licence may mean a minor increase of alcohol-related harm to this vulnerable group, by reason of more convenient access to liquor or opportunistic access.

#### *Weighing of the Factors*

120. Whilst it is acknowledged that harm and ill-health exists within the relevant area, and that there is a possible degree of harm that may occur due to the granting of the Application, the Commission considers that, having regard to the Applicant's experience, and the Applicant's acceptance of conditions in the public interest (as per paragraphs [7.6], [7.21] and [7.22] of the Applicant's Public Interest Assessment Submission), that although a degree of harm and ill-health exists, and the grant of this Application would likely lead to some increase of harm, it would not be to a level as to make it inappropriate to grant the Application.
121. In its public interest assessment, the Applicant agreed to comply with "any conditions imposed on the licence in the public interest" (PIA at page 5). The Applicant refers to "limitations" on external advertising (e.g., at pages 6 and 40 and 41), but does not define what those restrictions ought to be or how they should be expressed.
122. Given the Commission's findings as to the likelihood of an increase in alcohol-related harm from opportunistic purchases, the Commission holds that it is in the public interest to prohibit advertising, other than directional or premises name signage, on the external façade of the premises.
123. The other conditions which follow derive from the Applicant's PIA, or in the case of the cask wine prohibition, from the Applicant's Pracsys report at page 13.
124. The Commission would impose the following conditions on the Premises:
- a) Spirits, liqueurs and fortified wines are to be stored behind the point of sales counter and are only to be accessible by staff.
  - b) The licensee is to have and maintain a CCTV system throughout the licensed premises (including delivery areas) in accordance with the policies of the Director of Liquor Licensing. Specifically, the video surveillance system must:
    - i. comply with the "Minimum Standards – Closed Circuit Television (CCTV) Security System" policy as amended;
    - ii. record continuous images on any day that the venue trades from the commencement of trade until 1 hour after trading ceases; and
    - iii. retain recorded images for a period of twenty eight (28) days available for viewing or removal upon request by police or other persons authorised by the Director.
  - c) A range of zero, low and mid-strength alcohol beer is to be available.

- d) Signage is to be displayed within the store relating to secondary supply of alcohol, not serving juveniles and not serving intoxicated persons.
- e) The sale of cask wine is prohibited.
- f) The sale of beer in glass bottles of 750ml or more is prohibited.
- g) The sale of fortified wines in containers greater than 1 litre is prohibited.
- h) Unaccompanied juveniles are not permitted to enter or remain on the licensed premises.
- i) The liquor store is to be a separate tenancy to the supermarket, meaning the entire liquor display and sale area must be physically and visibly separated from the food/grocery display and sale area by solid non-transparent barricading and an entry/exit door or gate.
- j) The liquor browse/display area is to be closed off when not open for trade.
- k) The advertising or promotion of liquor (including signage from within the supermarket indicating liquor is available) on the external façade of the premises is prohibited, except for directional or Premises Name signage.

125. The Commission finds that the grant of the Application, subject to the above conditions, would be in the public interest for the purposes of section 38 of the Act.

***Consumer Requirement Condition (section 36B(4) of the Act)***

*Definition of locality*

126. The first step in making a determination as to section 36B(4) of the Act is to determine what is to be held as the 'locality' in this case.

127. The Commission holds that the locality is the area geographically close to the premises, being determined based on the circumstances of each individual case, looking to consider the topographical features and the areas of the site which would be accessed by people utilising various modes of transport.

128. The Applicant submitted that the appropriate locality in this case is an area defined in the Rowe Report, Attachment 2.

129. The Commission finds that that area is the appropriate locality ("**Locality**"), having regard to the:

- a) topographical features defining the area (i.e., the change in contour to the low-rise hills to the south, the water courses to the west and east); and
- b) the community indicia of "locality" under section 36B including community infrastructure, being the schools, sporting facilities and other community spaces identified in the Supplementary Rowe Report.

*What are the Local Packaged Liquor Requirements?*

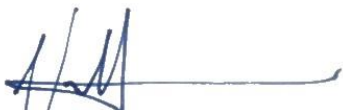
130. The Commission is required to determine, within the Locality determined, the packaged liquor requirements.
131. The Applicant has submitted several reports which provide evidence that there is a consumer need for competition, convenience, and one-stop shopping. The Intervener challenged these findings, submitting that there has been insufficient evidence presented.
132. The Commission holds that, within the Locality, the local packaged liquor requirements include competition and convenience including for one-stop shopping.

*Are the Local Packaged Liquor Requirements met by existing stores?*

133. The Commission is then required to determine whether the local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the Locality.
134. There is only one liquor store within the Locality which is a bottle shop connected to the Tambrey Tavern. Its offering is limited, and it does not provide consumers with one-stop shopping.
135. At the hearing, counsel for the First Intervener conceded that, if the Commission construed the appropriate locality in this case to be that proposed by the Applicant, it would be open for the Commission to find that the local packaged liquor requirements were not met with reference to the lack of one-stop shopping options in the locality.
136. The Commission holds that the local packaged liquor requirements in the Locality are not reasonably met by the existing store. Therefore, the Applicant has satisfied the consumer requirement condition as set out in section 36B(4) of the Act.

**CONCLUSION**

137. The Commission finds that the public interest condition (section 38 of the Act) and the consumer requirement condition (section 36B(4) of the Act) have been met.
138. Accordingly, the application for the conditional grant of a Liquor Store Licence is granted, subject to the conditions set out at paragraph 124 above.



**NICHOLAS VAN HATTEM**  
**DEPUTY CHAIRPERSON**



**ELANOR ROWE**  
**MEMBER**



**TONY DI FRANCESCO**  
**MEMBER**

## Appendix 1 – Index of documents

<p><b>JB Foods Pty Ltd and Commissioner of Police &amp; Anor - L30/01/514</b></p> <p><b>TRIAL BUNDLE INDEX</b></p> <ul style="list-style-type: none"> <li>• Volume 1– Evidence of applicant</li> <li>• Volume 2 – Evidence of intervener’s</li> <li>• Volume 3 – Applicant’s Submissions &amp; Cases</li> <li>• Volume 4 – Intervener’s Submissions &amp; Cases</li> </ul>
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### Volume 1 Trial Bundle Index – Evidence of applicant – L30/01/514

Document Number	Submission Paras	Index cross-reference	Document Description
1.	13, 14, 16, 20, 32(d)	Item 39	Rowe Group Report 15 March 2021 (the Rowe Report)
2.	17, 18, 19(d)	Item 1.11	Karratha City of the North Plan Summary (Capital City Plan) - City Growth Plan (From page 28) - City Centre Master Plan (From page 44)
3.	21, 22, 63, 64, 66, 67	Item 40	Pracsys Karratha Cellars Retail Economics Analysis (March 2021)
4.	25	Item 1.8	Harm minimisation documents – House management policy, code of conduct and house management plan
5.	25	Item 1.15	Staff RSA Handbook
6.	25	Item 1.4	Public Interest Assessment Submission
7.	39, 40	Item 1.34 Item 38.3	City of Karratha Local Planning Strategy (June 2015) (Page 14)
8.	41	Doc 1.23	Structure Plan 2015 (Pages 31, 33)
9.	43(a)	Item 20.4 Item 21.4 Item 22.5	MacroPlan Trade Area Analysis
10.	43(b)-(g), 43(i)	Item 31.5 Item 35.5	4 Letters of Support
11.	44	Item 1.6	Survey results (the first survey)
12.	46, 47(c)	Item 31.2 Item 35.2	Research Solutions survey results (the second survey)
13.	48	Item 41	Market Research Findings by Research Solutions



Volume 2 Trial Bundle Index – Evidence of interveners – L30/01/514

Document Number	Submission Paras	Index cross-reference	Document Description
See vol 1, document 6	12	Item 1.4	Public Interest Assessment Submission at [1.1], [1.7], [1.8], [1.10]
1.	13, 43	Item 31	Applicant's section 36B submissions from HTS dated 8 May 2020
See vol 1, document 1	39(a), 43	Item 39	Rowe Group Report 15 March 2021 (the Rowe Report)
2.	45, 46	Item 34	Applicant's submission - Closing submissions from HTS to PCADS dated 22 May 2020 at [4], [23].
See vol 1, document 12	45	Item 31.2	Research Solutions survey results (the second survey)
See vol 1, document 3	45	Item 40	Pracsys Karratha Cellars Retail Economics Analysis (March 2021)
See vol 1, document 13	49	Item 41	Market Research Findings by Research Solutions, Figure 9 (Brindle Group survey)
3. 3.1 3.2	68(a), 77	Item 14	<p>Notice of intervention from the Chief Health Officer (CHO) dated 19 December 2019.</p> <p>At [2.2], [2.5], [2.5.1], [2.5.2], [3.1], [3.2], [4.0], [4.1], [4.1.1] and Attachment 2.</p> <p>[4.1] literature cited:</p> <ol style="list-style-type: none"> <li>a. Babor, T. F., et al (2003) Alcohol: No ordinary commodity. Research and Public Policy. Oxford, Oxford University Press. P.133.</li> <li>b. National Drug Research Institute (2007) Restrictions on the sale and supply of alcohol: evidence and outcomes. National Drug Research Institute, Curtin University of Technology: Perth, WA. P.187, 201.</li> </ol>
See vol 4, document 3	68(a), (f), 73		<p>Chief Health Officer updated evidence.</p> <p>At [1.2], [2.1.1], [2.2], [4.1]-[4.3] and attachments.</p>
4.	68(b)-(f)	Item 13	<p>Notice of intervention from the Commissioner of Police (Police) dated 18 December 2019. Includes the following attachments (see documents 13.1 to 13.9).</p> <p>At [13]</p> <ul style="list-style-type: none"> <li>• Attachment A - WACOSS and WANADA Pilbara Liquor Restrictions - The Facts</li> <li>• Attachment E - Statement of Senior Sergeant Andrew Stevens, OIC Karratha Police Station [25]</li> </ul>

			<ul style="list-style-type: none"> <li>• Attachment F - Statement of Sergeant Deborah Edwards, Karratha Family Coordinator [5], [6], [9], [13]</li> <li>• Attachment G - Statement of Christine MacDonald, Karratha Women's Refuge [5], [6]</li> <li>• Attachment H - Statement of Superintendent Kim Massam, Pilbara District Officer [9], [11], [18]</li> </ul>
5.	-	Item 37	Final evidence from the Police dated 14 August 2020

Volume 3 Trial Bundle Index – Applicant’s Submissions & Cases – L30/01/514

Document Number	Index cross-reference	Document Description
<b>Primary submissions dated 20 September 2023</b>		
1.		Applicant’s Submissions dated 20 September 2023
2.		Statutory Declaration of Steven Charles Perry sworn on 17 February 2023
<b>Responsive submissions dated 7 March 2023</b>		
3.		Applicant’s Responsive Submissions dated 7 March 2023
4.		Australian Bureau of Statistics, Population of Karratha 2021
<b>Cases</b>		
5.		<i>Liquorland (Australia) Pty Ltd v Director of Liquor Licensing</i> [2021] WASC 366, at [82]-[83], [102]-[103], [186]
6.	Item 20.7 Item 21.8 Item 22.10	<i>Woolworths Limited v Director of Liquor Licensing</i> [2013] WASCA 227
7.	Item 20.3 Item 21.2 Item 22.3	<i>Carnegies Realty Pty Ltd v Director of Liquor Licensing</i> [2015] WASC 208
8.		<i>Executive Director of Health v Lily Creek International Pty Ltd</i> [2000] WASCA 258, at [42]-[44].
9.		<i>McRedmond v Tassell</i> [2002] NSWSC 1163
10.		<i>Highmoon Pty Ltd v City of Fremantle</i> [2006] WASCA 21

Volume 4 Trial Bundle Index – Intervener’s Submissions & Cases – L30/01/514

Document Number	Index cross-reference	Document Description
<b>Primary submissions dated 20 February 2023</b>		
1.		Primary submissions of the First and Second Interveners dated 20 February 2023
2.		Police updated data
3.		Chief Health Officer updated evidence
<b>Responsive submissions dated 7 March 2023</b>		
4.		Reply Submissions of the First and Second Interveners dated 7 March 2023
See vol 3, document 2		Statutory Declaration of Steven Charles Perry sworn on 17 February 23 at [4], [5]
See vol 2, document 3	Item 14	Notice of intervention from the Chief Health Officer dated 19 December 2019. At paragraph 4.1.1
See vol 1, document 12	Item 31.2 Item 35.2	Research Solutions survey results (the second survey) at page 5
<b>Cases</b>		
5.		<i>Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police</i> [2017] WASC 88 at [16]
6.		<i>Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police</i> (LC 16/2015) at [62]
7.		<i>Busswater Pty Ltd v Director of Liquor Licensing</i> (LC 17/2010) at [36]
See vol 3, document 7	Item 20.3 Item 21.2 Item 22.3	<i>Carnegies Realty Pty Ltd v Director of Liquor Licensing</i> [2015] WASC 208 at [9], [22], [42]-[43]
8.		<i>Director of Liquor Licensing v Kordister Pty Ltd</i> [2011] VSC 207 at [271]
9.		<i>Executive Director, Public Health v Highmoon Pty Ltd</i> [2002] WASCA 77 at [10]
See vol 3, document 8		<i>Executive Director of Public Health v Lily Creek International Pty Ltd</i> [2000] WASCA 258 at [6]-[7], [19]-[22], [37]

10.	Item 44	<i>JB Foods Pty Ltd v Commissioner of Police</i> [2022] WASC 352
See vol 3, document 5		<i>Liquorland (Australia) Pty Ltd v Director of Liquor Licensing</i> [2021] WASC 366 at [31]-[34], [89]-[108], [181]-[187]
11.		<i>Palace Securities v Liquor Licensing</i> (1992) 7 WAR 241, 249, 263
12.		<i>Re Gull Liquor, Gingers' Roadhouse Upper Swan</i> (1999) 20 SR (WA) 321, 340
13.		<i>Ridgecity Holdings Pty Ltd and City of Albany</i> [2006] WASAT 187 at [42]
14.	Item 20.2 Item 21.1 Item 22.2	<i>Sunseasons Pty Ltd (ACN 070 489 495) v Director of Liquor Licensing</i> (LC 21/2019) at [22]
15.		<i>Terra Spei Ply Ltd and Shire of Kalamunda</i> [2015] WASAT 134 at [89]
16.		<i>Woolworths Ltd v Director of Liquor Licensing</i> (2013) 45 WAR 446
17.		<i>Woolworths Ltd v Director of Liquor Licensing</i> [2012] WASC 384 at [32]