

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS

PREMISES ADDRESS: SHOP 20, NORTHAM BOULEVARD SHOPPING CENTRE,
171 FITZGERALD STREET, NORTHAM

APPLICATION ID: A000057290

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR
STORE LICENCE

DATE OF DETERMINATION: 14 DECEMBER 2015

Introduction

- 1 On 22 December 2014, an application was lodged by Woolworths Limited ("the Applicant") for the conditional grant of a liquor store licence for premises to be located at Shop 20, Northam Boulevard Shopping Centre ("the Centre"), 171 Fitzgerald Street, Northam and to be known as *BWS - Beer Wine Spirits*. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* ("the Act").
- 2 On receipt by the licensing authority, the application was advertised in accordance with instructions issued by the Director of Liquor Licensing ("the Director"). As a result, notices of objection to the grant of the licence were made by:
 - (a) Leonie Knipe;
 - (b) Northam Chamber of Commerce;
 - (c) Alan Roy Eades;
 - (d) Hon. Paul Brown MLC;
 - (e) Ross John Oxley;
 - (f) The Salvation Army – Northam Corp;
 - (g) Timothy Ryan;
 - (h) Nicole Bell;
 - (i) Shirley Smith;
 - (j) Donna Marie Fehlauer;
 - (k) Simon Wooding;
 - (l) Edward Blair;
 - (m) Hon Mia Davies MLA;
 - (n) Cancer Council WA Inc;
 - (o) Dr Kevin Christianson;
 - (p) Reg Stevens;
 - (q) Randle William Beavis;
 - (r) Robert Graham Davey;
 - (s) Tania Davey;
 - (t) Noelene Norrish;
 - (u) Dr Julienne Roe;
 - (v) Dr Stephanie Jane Spencer;
 - (w) Debra and Colin Pedder;
 - (x) John Proud;
 - (y) Dennis and Kathy Saunders;
 - (z) Simon Todd Northey;
 - (aa) Preston Sydney and Elizabeth Ann Smith;
 - (bb) Rosalie Moller;
 - (cc) Max and Stephanie Hubble;
 - (dd) Karen Buttersfield; and
 - (ee) Sheet Nominees Pty Ltd, Vanda Investments Pty Ltd and Blair Investments Pty Ltd and Hade Pty Ltd ("Licensee Objectors").

- 3 Also, pursuant to s 69 of the Act, the Executive Director Public Health (“EDPH”) and the Commissioner of Police (“the Commissioner”) lodged notices of intervention¹ to assist the licensing authority in order to assist the licensing authority in making an informed decision.
- 4 To give effect to the provisions of s 16(11) of the Act, a document exchange was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case. Further submissions were only lodged by the Applicant, EDPH, Commissioner, Licensee Objectors and the Hon Paul Brown MLC.
- 5 Pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties, which are summarised below.

The Applicant’s submissions

- 6 According to the Applicant, Northam is in a population growth phase, as it has been identified under the State Government’s Regional Centres Development Plan, as “one of a network of nine Supertowns... that will play a key role in the future development of regional Western Australia.” In addition to residents of the town, the Applicant submitted that Northam also serves a regional role in a sub region of 50,000 residents.
- 7 The Centre contains a Woolworths supermarket and over 22 specialty stores, which the Applicant submitted, provides a major retail focus for residents of, and visitors to, Northam. Additionally, a Target store and other speciality stores are also located alongside the Centre. As such, the Applicant submitted that locating the proposed liquor store alongside the Woolworths supermarket will cater to the contemporary shopping requirements of consumers at the Centre, meeting their convenience and expectations of a supermarket; and also their need for the BWS store to form part of the supermarket and Centre.
- 8 To support its application, the Applicant submitted a Public Interest Assessment (PIA) and other submissions, including a social risk matrix and assessment, background information on Woolworths’ trading record, a plan of the proposed store, as well as various statements from employees of Woolworths and its legal counsel. Together, these submissions also further the Applicant’s central contention that the grant of the application will provide consumers with increased shopping convenience by enabling packaged liquor purchases at the same time as consumers complete their grocery shopping (i.e. one-stop shopping). Conversely, the Applicant submitted that if the application is not approved, shoppers attracted to the Centre, who have a requirement to purchase packaged liquor, will be inconvenienced by being forced to make multiple trips to complete their household shopping requirements.

¹ In relation to the representations made in the notices of intervention, it should be noted that as interveners the EDPH and Commissioner carry no burden of proof (see Greaves J, Re Gull Liquor (1999) 20 SR (WA) 321).

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- 9 The Applicant's PIA rigorously examined the positive impacts of the application, with particular reference to the type of outlet (i.e. a liquor store); the trading hours proposed and the manner in which the business is to be operated (namely, the management of the BWS Store; the nature of the clientele; responsible serving practices; and the extent to which the proposed management practices can mitigate any potential for adverse impact). Issues associated with outlet density were also examined, particularly in relation to the number of licensed premises that are permitted to make packaged liquor sales in the locality.
- 10 It was a central part of the Applicant's case that the grant of the licence will not result in a change in existing consumer behaviour as to the type or quantity of liquor to be consumed in Northam, given that the proposed licensed premises will not introduce "new drinkers" to the market, but rather cannibalise sales made at existing licensed premises, essentially resulting in a redistribution of market share for packaged liquor products. The Applicant also submitted that the grant of the application would not result in the lowering of the price of alcohol in the locality, given that:
- (a) there is already a competitive liquor market in Northam; and
 - (b) the Northam Growth Plan has already identified current leakage of retail spending to the Metropolitan Perth Centres such as Midland and Morley, which means that the proposed BWS Store is not likely to introduce a price structure that is not already available to residents of Northam now through their existing shopping patterns.
- 11 Regarding the issue of increasing outlet density, the Applicant submitted that it has been found that "outlet density alone may not be the sole cause of negative social impacts" and the relationship between alcohol outlet density and alcohol-related harm is complex, which means that an additional liquor outlet does not always lead to a potential for increased harm. As such, the Applicant asserted that it is highly unlikely that the grant of the licence will have any negative impacts.
- 12 According to the Applicant, 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 identified at-risk groups, which means there is little likelihood of high numbers of at-risk persons possibly congregating near the BWS Store.
- 13 While it was acknowledged by the Applicant that the SEIFA indices confirm that the Northam community is relatively disadvantaged, it relied upon a number of published articles, such as the observations of the Land Environment Court in *Martin Morris & Jones v Shoalhaven City Council* [2012] NSWLEC 1280, to establish that the low SEIFA scores for Northam Shire and Northam do not support a negative conclusion that the community is at a higher risk for, or more susceptible to, alcohol related harm.

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- 14 Furthermore, given that there are significantly lower numbers of young persons in Northam and the Shire; and that the median age in both Northam and the Shire is greater than the State average, the Applicant also cited the observations from the 2010 Catholic Health Australia and TATSEM report *Health Lies in Wealth: Health Inequalities of Australians of Working Age*, to establish that the SEIFA indices should not detract from the public interest benefits associated with the granting of the application given that household income is not determinative of alcohol-related harm and those in the bottom income quintile are 30% less likely to be high risk drinkers, compared to men in the top income quintile.
- 15 Similarly, despite the existing availability of packaged liquor in Northam, the Applicant submitted that crime is low, with the Applicant relying upon the findings of:
- (a) an article entitled *Alcohol Consumption in Australia: A Snapshot, 2004-05* published by the Australian Bureau of Statistics (“ABS”), which provides an overview of the level, prevalence and type of alcohol consumption; the health status, risk factors and demographic characteristics of those who drink alcohol at risky or high levels; as well as information on mortality and health costs; which found that “11% of respondents in the most disadvantaged areas (1st quintile of the SEIFA Disadvantage Index) were classified as drinking alcohol at risky/high risk levels, compared to 16% in the least disadvantaged areas (5th quintile)”, which the Applicant submitted means there is less risk of persons consuming alcohol at risky/high levels in Northam and the Shire when compared to more advantaged areas; and
 - (b) the *2013 AIHW Household Survey Report*, which confirms that “While people with the lowest SES were more likely to smoke, it was people with the highest SES who were more likely to drink... and consume alcohol in quantities that placed them at risk of an alcohol-related disease, illness or injury. People with the lowest SES were twice as likely to abstain and a little less likely to drink alcohol in risky quantities compared with people in highest SES group... People in the lowest SES group were also less likely to drink at risky levels at least once a month (from 27% in 2010 to 24% in 2013) but there was no change in drinking at these levels among people from the highest SES group.”
- 16 The Applicant also submitted that mitigation measures play a significant role in the assessment process of any application and that Woolworths offers practical measures, based on its experience, which have proven to work effectively in other locations.
- 17 In this regard, the Applicant observed that the sale of packaged liquor by Woolworths Limited in a tenancy adjoining a supermarket environment has been offered since 1961 and that many of its supermarkets have a licensed area forming part of, or associated with, a supermarket, which is also true for other major retailers, such as Coles and IGA. Therefore, it is submitted that problems with this pattern of trade would see significant alcohol-related harms in Australia, but the reality is quite

different: despite community fear that crime is increasing, crime rate data shows that crime is stable or decreasing.

- 18 Accordingly, the Applicant submitted that it can accurately determine the likely impact of the grant of the application on the locality, based on its operating experience in other locations:

“BWS stores have co-existed as departments of Woolworths’ Supermarkets for decades (previously under the brand name “Woolworths Liquor”) without any suggestion that their size or their association with the supermarket might impact adversely on local communities. It follows that the BWS Store forming part of the Centre and Supermarket is both common and expected.”

- 19 According to the Applicant, the proposed store will occupy approximately 154 m² and will consist of a display area with high and low profile shelving, bulk displays, refrigerated cabinets with associated shelving and storage areas. The design and layout of the store will allow for an “interactive” shopping experience making it convenient to customers to locate products and make their selections. Customers will access the proposed liquor store from the Centre’s common internal mall and the layout of the store will also permit staff to serve, monitor and supervise customers.
- 20 Although seeking to trade the range of permitted trading prescribed in s 98D(1)(a) of the Act, the Applicant noted that its trading will nonetheless be curtailed by the operating hours of the Centre.
- 21 The Applicant submitted that it engaged West Coast Field Services to randomly survey 405 consumers in face to face interviews outside of the Supermarket in the Centre, in order to ascertain their overall support for the BWS Store and that 55% of liquor purchasers (i.e. persons who disclosed that they have a general need to purchase liquor) surveyed believed the location of a BWS Store adjacent to the Supermarket was a good idea (of which 67% subsequently noted “convenience to buy liquor and groceries at the same time”), with 2% indicating that they could not say whether it was a good idea or not and 43% of respondents indicating it was a bad idea.
- 22 When asked how likely it is that they would patronise the proposed liquor store 56% of liquor purchasers indicated that they are likely, or extremely likely, to patronise the BWS Store, of which 84% indicated they would so as part of their shopping experience at the Supermarket.
- 23 Additionally, the Applicant submitted that no other premises in Northam can meet the one-stop shopping requirements of Woolworths’ customers and Northam is part of an area that is a significant tourist destination and it is expected that visitors will continue to be attracted to Northam in the future because of its many recreational facilities.

Submissions of the EDPH

- 24 The representations of the EDPH regarded the proposed licence premises in the context of the characteristics in the local community, including existing levels of alcohol-related harm and ill-health.
- 25 Accordingly, the Intervention was premised on the following points:
- (a) there is alcohol-related harm and ill-health occurring in Northam;
 - (b) some alcohol-related harm and ill-health in Northam is higher than the State;
 - (c) the application will offer purchasing convenience, which has the potential to influence drinking behaviours;
 - (d) the Applicant's definitive conclusion that its patrons will be at low-risk of harm is premised on contradictory and misapplied information; and
 - (e) in the context of a community experiencing higher than average levels of harm, harm minimisation strategies proposed by the applicant may be limited in their effectiveness, given packaged liquor is consumed away from the premises.
- 26 Despite the Applicant's claims to the contrary, the EDPH submitted that there is evidence from a variety of sources that alcohol is being consumed in Northam in a manner that is contributing to both short term and longer term harm and ill-health outcomes, some of which are higher than State rates.
- 27 In this context, the EDPH submitted that even moderate levels of ongoing alcohol-related harm or incidents can indicate that one or more structural, environmental and/or community factors exist that support the problems to occur, making the potential for further harm greater if a new variable is introduced, such as a new liquor store.
- 28 According to the EDPH, establishing that harm is already occurring in the locality is consistent with the approach taken by Justice Edelman in *Liquorland (Australia) Pty Ltd -v- Executive Director of Public Health* [2013] WASC 51, where it was observed that:
- “In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level. It may be that where an existing level of risk is greater, a small increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing ‘at risk’ persons who might be further affected.”
- 29 Evidence of existing alcohol-related harm in the locality relied upon by the EDPH included information relating to alcohol-related hospitalisation figures, treatment statistics and WA Police offence statistics.

- 30 Further information was also submitted in relation to persons seeking alcohol treatment at the Holyoake Northam – Wheatbelt Community Alcohol and Drug Service (“WCADS”) located in Northam. Noting that the WCADS provides services to persons residing in the Wheatbelt, including Northam, the EDPH submitted that the WCADS provides assessment, referral and counselling to adults, young people, and families, with the aim of reducing alcohol and other drug related harm in the Wheatbelt region.
- 31 In relation to the WCADS services, it was reported that there were 439 treatment episodes involving persons residing within the suburb of Northam between 1 January 2011 and 31 December 2013, with approximately half (51.2%, n=225) of these treatment episodes being for persons seeking treatment for alcohol as a drug of concern, as shown in the following table:

Primary or Other Drug of Concern	2011	2012	2013	2014*
Alcohol	60	78	87	110
Other drugs	64	69	81	114
Total	124	147	168	224
% Alcohol	48.4%	53.1%	51.8%	49.1%

* 2014 not yet complete and subject to change.

- 32 The range of alcohol-related problems dealt with by the WCADS was further explained in the statement of the Regional Manager of the Wheatbelt Community Alcohol and Drug Service, which was included as an Attachment to the intervention. The Regional Manager stated that:

“The types of alcohol related problems that the WCADS clients experience relate to both dependent and binge patterns of use. Examples of alcohol related issues experienced by clients include:

- Relationship issues;
- Legal issues;
- Loss of drivers licence;
- Fighting and assaults;
- Loss of employment or being unable to keep a job due to alcohol;
- Financial problems, unable to pay the rent or mortgage;
- Mental Health issues.

Other ways that the WCADS see alcohol affecting our clients include domestic violence which is a major issue. Neglect of family and children, financial issues and driving without a licence are also issues.”

- 33 The EDPH submitted that despite the Applicant's position that the increase in density of licensed premises has had little to no effect on the level of alcohol consumption, there is a significant body of research spanning more than 30 years, which demonstrates a positive relationship between alcohol availability in populations and the frequency and range of social and health problems. Furthermore, the EDPH also observed that each of the reviews are consistent in their findings that, although the relationship is complex and may vary in magnitude over time and place, there is clearly a demonstrable, positive relationship between the availability of alcohol and associated harm, problems and ill-health.
- 34 After outlining the existing levels of alcohol-related harm in the locality, the EDPH submitted that there are a number of characteristics of the proposed licensed premises that may contribute to that harm, including that:
- (a) BWS Northam will sell packaged liquor and will provide increased convenience for purchases, given its co-location with the Woolworths supermarket, which not only distinguishes it from other outlets, but also has the potential to contribute to alcohol-related harm in a community already experiencing problems higher than the State rate; and
 - (b) while the Applicant claims that the venue will not affect consumer behaviour or consumption other than their place of purchase, the EDPH notes that accessibility and convenience of alcohol purchase can influence purchase and consumption behaviours and the evidence suggests at-risk groups are more sensitive to features considered to be cues/triggers to alcohol use, which can influence the amount of alcohol consumed, and related harm.
- 35 In response to the Applicant's claims regarding the SEIFA evidence, the EDPH submits that there are a number of flaws with the Applicant's harm considerations regarding the Socio Economic Status ("SES") of the Northam community. In particular, while the referenced studies reported that high SES is linked with greater alcohol consumption, the EDPH submitted that the Applicant failed to explore the nature of the impact of alcohol consumption in lower SES communities.
- 36 Noting that the Applicant is aware that unemployment in Northam (7.2%) is higher than the Northam Shire (6.6%) and WA (4.7%), the EDPH referred to literature, particularly referencing a study by Spooner and Hetherington regarding the social determinants of drug use (including alcohol use), to establish that socio-economic status is a key indicator linked to the cycle of alcohol and other problems. As such, people from low socio-economic groups are likely to have poorer health outcomes due to tobacco use, drinking alcohol in a high-risk manner and other drug use.
- 37 The EDPH further submitted that the socio-economic circumstances of communities can influence drinking behaviours and drinking behaviours can, in turn, influence socio-economic circumstances – a situation which can best be described as a cycle of economic disadvantage; where both factors influence and impact on each other, with

problematic alcohol and drug use associated with a number of social challenges, including, but not limited to:

- (a) access to employment and education;
- (b) poor health;
- (c) financial security;
- (d) access to housing; and
- (e) emotional and social support.

38 In relation to this cycle of economic disadvantage, the EDPH further submitted that unemployment exacerbates alcohol-related problems and there is also evidence to show a link between unemployment and poor health, as well as other psychological effects often associated with alcohol and drug use. The EDPH also noted that this was conceded by the Applicant in its PIA, where the Applicant admitted that there are a number of factors that influence overall health, including triggers, such as stress or unemployment, which can make a person (or groups of persons) indulge in poor decision making processes and poor lifestyle choices, such as taking drugs or using alcohol irresponsibly.

39 In addition to the broader level of disadvantage and unemployment in Northam, the EDPH also asserted that there are sensitive services and other related at-risk groups that may be impacted upon by the new liquor store.

40 Accordingly, the EDPH noted that the statutory objects of the Act are clearly set out within s 5(1) and (2), which suggests that the sale, supply and consumption of liquor should be regulated and that there may be circumstances where, having considered and balanced (at times) competing considerations, the licensing authority considers that the likely harm or ill-health that an application will potentially cause is such that it justifies the refusal of the application on the basis that it is not in the public interest.

41 Furthermore, the EDPH also noted that in *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207, Bell J found that:

“applying the harm minimisation object does not necessarily involve an inquiry into whether the licensed premises are, or will be, to blame for misuse or abuse of alcohol which is causing, or likely to cause, particular harm.”

42 Accordingly, the EDPH submitted that there is no requirement that the licensing authority make a finding that the specific premises will be responsible for an increase in alcohol-related harm and ill-health, although it was noted that it is “of course possible that such a finding may be made and, if it is, it is likely to weigh strongly in the assessment of whether granting the application is in the public interest.”

Submissions of the Commissioner

- 43 The Commissioner made representations and submissions that the grant of the application would result in public harm and/or disturbance, if conditions are not imposed on the licence; and on other matters relevant to the public interest.
- 44 In this regard, the Commissioner's representations are particularly concerned with theft and licensed premises being closely interrelated with juveniles and other 'at-risk' groups under the *Drug and Interagency Strategic Framework for Western Australia 2011-2015*, with the Commissioner noting that:
- (a) Aboriginal persons constitute 7.1% of the population of Northam, which is more than double the percentage of the population in Western Australia (State average);
 - (b) children represent a significant portion of Northam's population, which is also well above the State average;
 - (c) median weekly income figures depict that across all demographics living in Northam the median weekly income is well below the State and National levels and that people living in Northam generally fall into the low socio economic category; and
 - (d) the population of unemployed persons in Northam is 7.2%, compared to 4.7% of the population of Western Australia.
- 45 Accordingly, the Commissioner's representations were concerned with the fact that a relatively high proportion of Northam's population can be considered to be of a low socio-economic status; and also noted the presence of several 'at-risk' groups, who experience greater impacts of alcohol consumption and will suffer greater impacts from the grant of the licence, without relevant trading conditions imposed to minimise alcohol-related harm or ill-health associated with the grant of the licence.
- 46 To emphasise this view, the Commissioner also lodged police data regarding existing alcohol-related harm and offences in the locality, sourced directly from the Police Incident Management System and Computer Aided Dispatcher System ("CAD")².
- 47 The Commissioner's relevant representations also noted that the number of alcohol-related criminal offences in Northam, between the dates of October 2013 and November 2014, was 132, which equates to 23% of the total number of offences for the area or that approximately one in every four offences is alcohol-related. Accordingly, the Commissioner submitted that an increase in these crime figures would not be tolerated well in the community, as it would impact on sensitive public and community resources.

² In this regard, the Commissioner noted that raw statistical data was specifically sourced for the purposes of the intervention, which is not reflective of the information available to the general public on the Western Australian Police website.

- 48 Furthermore, in the 12 months from October 2013 to November 2014, the Commissioner submitted that there were:
- (a) 58 domestic assault offences classified as alcohol-related (and 64 offences that were non-alcohol-related); and
 - (b) 21 non-domestic assault offences which were recorded as alcohol-related (and 81 being non-alcohol-related).
- 49 In relation to these numbers of alcohol-related domestic and non-domestic offences, the Commissioner referred to a study³ conducted of packaged liquor outlets in Melbourne, where it was estimated that “for every 10% increase in the density of packaged liquor outlets, it could be expected that assaults recorded by police would rise 1%, hospitalisations caused by assaults would rise by 0.5%, family violence incidents would rise by 3.3% and hospitalisations due to alcohol-specific chronic diseases would rise 1.9%.”
- 50 The Commissioner’s representations further noted that it has been found⁴ that other types of licensed premises are only significantly linked with assault rates, whereas packaged liquor density is also positively associated with domestic violence, chronic disease and very heavy episodic drinking (particularly among young persons.)’
- 51 The Commissioner therefore submitted that the present application presents a comparatively high and particularly concerning risk of harm, including, but not limited to, alcohol-related assault offences,
- 52 While noting the Applicant’s proposed harm minimisation initiatives, the Commissioner also noted the practical realities of retailing and staff workloads, which present difficulties in the screening of juveniles, theft deterrence and enforcement of dress standards. Therefore, in addition to the Applicant’s ‘ID Under 25’ initiative and proposed security measures, the Commissioner recommended that it would be in the public interest to impose additional conditions on the licence, if granted, to specifically address issues of likely alcohol-related harm.

Submissions of the Objectors

Licensee Objectors

- 53 The objection by the Licensee Objectors proceeds on the grounds that the grant of the application would:
- (a) not be in the public interest (refer s 74(1)(a) of the Act);

³ Livingston, M. (2014) ‘Liquor regulation: Beyond the night-time economy’ in Wardle, J (2015) ‘Price-based promotions of alcohol: Legislative consistencies and inconsistencies across the Australian retail, entertainment and media sectors’, *International Journal of Drug Policy*, 26, 522-530 at 534.

⁴ Wardle, J (2015) ‘Price-based promotions of alcohol: Legislative consistencies and inconsistencies across the Australian retail, entertainment and media sectors’, *International Journal of Drug Policy*, 26, 522-530 at 534.

- (b) cause undue harm or ill-health to people, or any group of people due to the use of liquor (refer s 74(1)(b) of the Act);
 - (c) cause 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 (refer s 74(1)(g)(i) of the Act); and
 - (d) otherwise be contrary to the Act (refer s 74(1)(j) of the Act.)
- 54 These grounds are advanced as follows. First, the Licensee Objectors assert that the Applicant's reliance on one-stop-shop does not justify the grant of the application, as there are a range of venues in Northam within close proximity to the proposed store capable of selling packaged liquor. Furthermore, the Licensee Objectors also submitted that the Applicant's evidence does not establish that there is a consumer requirement for the proposed service in Northam, whilst also noting significant opposition to the grant of the licence from the Northam community (including a Customer Catchment Survey undertaken by the Licensee Objectors and signed by 1083 persons, of which 90% of respondents indicated that they believed harm or ill-health issues in Northam would worsen if the licence was granted and 96% of respondents indicated that they did not think another liquor store licence in Northam was in the public interest.)
- 55 The Licensee Objectors also submitted that the suburb of Northam is not currently in the midst of a population boom as portrayed by the Applicant and the fact that Northam has been labelled a Super Town does not mean that the projected growth relied upon by the Applicant will eventuate.
- 56 According to the Licensee Objectors, the Applicant's PIA was deficient in that it failed to identify the existence of:
- (a) *Holyoake Northam* – WCADS, which is located approximately 250 metres from the proposed store;
 - (a) the *Fresh Start* Northam Recovery Centre, a naltrexone clinic for recovering heroin addicts in the locality, approximately 500 metres from the proposed store;
 - (b) the *Waminda House Women's Refuge*, which is located less than 1.5 km from the proposed store; and
 - (c) an *Alcoholics Anonymous* group meets every Tuesday evening at a venue approximately 500 metres of the proposed store.
- 57 The Licensee Objectors also asserted that the level of offending at the Centre, as established by Police data obtained under the *Freedom of Information Act 1992*, was significant, with seven incidences requiring police attendance in the period from 1 January 2014 to 31 October 2014, as well as the reporting of relevant criminal activity by both *The West Australian* and *The Avon Valley Advocate* newspapers.

58 Finally, it was also submitted that the ‘cannibalising’ of sales from local independent retailers by a national corporation cannot be said to be having regard ‘to the proper development of the liquor industry...’, particularly in the case of Woolworths Limited, which has previously been found guilty of contravening the *Trade Practices Act 1974* (Cth) (as it was then known) in relation to its liquor business.

The Northam Chamber of Commerce

59 The Northam Chamber of Commerce⁵ objected to the grant of the licence on the basis that the application would:

- (a) not be in the public interest because:
 - (i) Northam has more liquor outlets than most Perth subdivisions, which can be directly linked to a heavy burden of antisocial behaviour and alcohol related violence;
 - (ii) the proposed site is less than 200 metres from a high school, which means that large number of school age children who use the Centre, both before and after school, would be subjected to an increased exposure to alcohol; and
 - (iii) during school holidays, the centre historically runs a number of school holiday programs, which would place a large volume of school children at risk of being subjected to potential anti-social behaviours that are normally associated with the presence of a liquor store;
- (b) cause undue offence, annoyance, disturbance or inconvenience as the issue of a licence would have a negative impact on the businesses that surround the proposed store, as well as extending out to employees who work within the vicinity of the shopping centre; and
- (c) would otherwise lessen the amenity, quiet or good order of the locality in which the premises are, or are to be situated, because:
 - (i) a liquor store inside the shopping centre without any external entry points, including loading areas, would mean that deliveries would have to be brought in through the main public doors, on pallets, which could be a hazard to pedestrians;
 - (ii) the Centre has become an unofficial respite centre for the senior citizens of the community, who could may be deterred or prevented from going about their business by undesirable persons drawn to the Centre by the liquor store, so much so that they may no longer feel comfortable in what should be a safe public space.

⁵ The Northam Chamber of Commerce declared a direct or indirect pecuniary interest in the refusal of the application arising from one of the Chamber of Commerce’s board members being the part owner of a local liquor store outlet.”

Hon Paul Brown MLC

60 The Hon Paul Brown MLC, Member for the Agricultural Region, submitted the following concerns:

- (a) that the Northam community is already serviced by six hotels, four clubs and three takeaway liquor stores;
- (b) that Northam has a large number of 'at risk' groups within its population, particularly that of indigenous youth who are increasingly disengaged with the normal structure of the community and that this group also faces greater social disadvantage from the effects that cheap alcohol has had on their cultural group for many years; and
- (c) that the community is concerned about underage binge drinking, particularly that of young males within the Northam community, and the increase in anti-social behaviour that is a by-product of that.

61 As with a number of other objectors, Mr Brown also expressed concern over the proposed liquor store being located in close proximity to St Joseph's Catholic School and the Northam Primary School and the Centre being a significant location for the youth of Northam, who will be exposed to overt alcohol advertising associated with the store, should the licence be granted.

Hon Mia Davies MLA

62 Ms Davies objection states "a number of constituents have contacted my office to express their concerns about the possibility of a liquor outlet in the Northam Boulevard. As the local Member of Parliament I felt it appropriate to draw your attention to some of the concerns relayed to me via these constituents." In addition to also raising concerns about the Centre being a meeting place for families, young people and the elderly and the potential for antisocial behaviours impacting on these groups of people by customers of the liquor store; as well as the proposed store being located in close proximity to two schools, the following concerns were noted:

- (a) that the Northam community currently has a number of liquor outlets, all of which are located within an approximate two kilometre radius of the Boulevard Shopping Centre; and
- (b) alcohol-related harm is of serious concern to many in the community, with the social and economic impact having far reaching impact for families.

Cancer Council of Western Australia Inc

63 Mr Slevin and Ms Stafford objected to the grant of the licence on behalf of the Cancer Council of Western Australia Inc., on the ground that the grant of the licence would not be in the public interest (refer s 74(1)(a) of the Act).

64 In this regard, it was submitted that there are a number of demographic factors specific to Northam that increases the risk of alcohol-related harms from the proposed liquor

store. Mr Slevin and Ms Stafford also noted The *Drug and Alcohol Interagency Framework for Western Australia 2011 – 2015* recognises that people from regional, rural and remote communities and people in low socio-economic areas are ‘at-risk’ groups and Northam is classified as a relatively disadvantaged area by the SEIFA index, with the town of Northam having the lowest score (923) in the Wheatbelt region. These risk factors are born out in the statistics for alcohol related harm in the region, with the 2010 Health and Wellbeing Surveillance System for the Wheatbelt region showing that nearly half (44.8%) of the adults drank at levels that put them at risk of long term harm.

- 65 Furthermore, it was also stated that Australian and international studies have established consistent associations between density of alcohol venues and outlets in an area and violence, road accidents, child abuse and neglect, neighbourhood amenity and mental health. Accordingly, Mr Slevin and Ms Stafford submitted that these factors should strongly mitigate against increasing the availability of alcohol in the Northam locality, where there are already eight existing outlets, which is a very high concentration of packaged liquor outlets for a population of only 6,850 people in a town that could not be considered a significant tourist destination.
- 66 Mr Slevin and Ms Stafford also noted that the concentration of packaged liquor outlets in Northam is not reflected in other Wheatbelt towns with a similar demographic profile, such as Narrogin (with a population of 4,765), which has three hotel licences and one liquor store and a similar SEIFA index score.
- 67 It was further submitted that the price of alcohol influences the quantity and frequency of alcohol purchases and the amount of alcohol consumed. In this regard it was submitted that young people are particularly price sensitive and the availability of cheap alcohol has an impact on their purchasing and consumption behaviours; with Mr Slevin and Ms Stafford particularly noting that in the Applicant’s supermarket catalogues for Western Australia, it has sold wine casks for the equivalent of \$2.50 per litre, which is less than the cost of a bottle of water and low cost alcohol products, such as cask wine, have been found to be associated with night time assaults and acute alcohol-related morbidity.
- 68 Additionally, it was submitted that in Western Australia, 80% of alcohol consumed by young people aged 14 to 24 years is consumed in ways that puts the drinker’s (and others’) health at risk of acute harm and the Applicant’s proposed premises would likely increase the availability of very cheap alcohol, which would not be in the interests of the Northam community.
- 69 The objection also progressed on the ground that 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 (refer s 74(1)(b) of the Act), given that:
- (a) a recent Surveillance Report by the Drug and Alcohol Office (“DAO”), using a standard methodology to derive the proportion of a hospitalisation for an alcohol-

related condition that is attributable to alcohol use, shows that the rate of alcohol-related hospitalisations in the town of Northam for the period of 2007 – 2011 was significantly higher (1.36 times) than the State rate. Although the rate for females was similar to the State average, the rate for males was significantly higher (1.51 times); and

- (b) the report also indicates that residents of the town of Northam were hospitalised 320 times for conditions related to alcohol, at a cost of approximately \$2,020,355 or \$60.56 per capita, which shows that the burden of alcohol-related harm is already high in the town of Northam, particularly among adult males.

The Salvation Army Northam Corps

70 Major Raymond Reeves, on behalf of The Salvation Army Northam Corps, objected to the application on the ground that the grant of the licence would be not be in the public interest (refer s 74(1)(a) of the Act.) The concerns expressed by Major Reeves related to concerns that the grant of the licence:

- (a) will lead to an increase in anti-social behaviour, given the negative effects of alcohol and its impact on individuals and their families;
- (b) will be detrimental to children and young people because it will normalise the purchasing of liquor while grocery shopping and perpetuate the problem of unhealthy liquor consumption by juveniles;
- (c) is unnecessary given that Northam already has enough liquor outlets;
- (d) is not supported by projected growth expectations relied upon by the Applicant, given the incremental growth in Northam over the last four years;
- (e) could lead to an increase in financial difficulties, given that Northam has a high percentage of low socio-economic households that could further suffer through the increased availability of liquor; and
- (f) the location is not beneficial because the shopping centre already has problems with theft and anti-social behaviour and the shopping centre is a social hub for many inhabitants of Northam.

The Residential Objectors

71 The remaining objections, which for ease of reference, will be referred to as the Residential Objectors, are those lodged by Shirley Smith; Timothy Ryan; Edward Blair; Simon Wooding; Nicole Bell; Donna Fehlauer⁶; Ross John Oxley⁷; Alan Eades; Max and Stephanie Hubble, Leonie Knife, Karen Buttersfield, Simon Todd Northey; Dr Kevin Christianson; Randle William Beavis; Reg Stevens; Robert Graham Davey;

⁶ Ms Fehlauer declared a direct or indirect pecuniary interest in the refusal of the application on the basis that she is the manager of a store located in the shopping centre and feels that the presence of a liquor outlet will have an adverse effect on trade.

⁷ Mr Oxley also declared a direct or indirect pecuniary interest in the refusal of the application because he is a director of Lauderdale Nominees Pty Ltd which leases the property associated with Liquor Barons Northam.

Noelene Norrish; Tania Davey; Dr Julienne Roe; Dr Stephanie Jane Spencer; Debra and Colin Pedder; John Proud; Dennis and Kathy Saunders; Rosalie Moller; and Preston Sydney Smith and Elizabeth Ann Smith.

72 The broad grounds of objection relied upon by the these objectors are that:

- (a) “The population has not increased in the past. I fail to see that it will in the future.” - Shirley Smith, Nicole Bell, Ross John Oxley, Simon Todd Northey, Dr Christianson and Reg Stevens;
- (b) “No need for the licence.” - Edward Blair, Simon Wooding, Donna Fehlauer, Ross John Oxley, Max and Stephanie Hubble, Simon Todd Northey, Reg Stevens, Robert Graham Davey, Tania Davey, Dr Roe, Dr Spencer, John Proud and Kathy Saunders;
- (c) “... the experience of working as a General Practitioner in Northam for 28 years, including time as a Visiting Medical Officer at the Northam Hospital, seeing both in-house and casualty patients... strongly suggests that the incidence of alcohol-related problems, especially in the younger population, has increased, as has the number of alcohol-related problems in General Practice” and “The BWS Store may for the closure of existing licensed venues.” – Dr Christianson;
- (d) “Anti-social behaviour and crime in this Centre or in Northam, and the potential for it to increase as a result of the approval of this Application, consequently the amenity is likely to be adversely affected.” - Shirley Smith, Timothy Ryan, Nicole Bell, Ross John Oxley, Alan Eades, Max and Stephanie Hubble, Simon Todd Northey, Randle William Beavis, Reg Stevens, Robert Graham Davey, Tania Davey, Dr Roe, Dr Spencer, Debra and Colin Pedder, Edward Blair, John Proud, Dennis and Kathy Saunders, Rosalie Moller; and Preston Sydney Smith and Elizabeth Ann Smith;
- (e) “The location of the local Catholic High School; that children attend this Centre; and the effects of liquor advertising/signage.” - Timothy Ryan, Edward Blair, Nicole Bell, Donna Fehlauer, Alan Eades, Dr Christianson, Randle William Beavis, Reg Stevens, Dr Roe, Dr Spencer, John Proud, Rosalie Moller; and Preston Sydney Smith and Elizabeth Ann Smith;
- (f) “The location of the BWS Store opposite a church.” - Alan Eades, Randle William Beavis; and Preston Sydney Smith and Elizabeth Ann Smith;
- (g) “The elderly attend this Centre.” - Shirley Smith, Edward Blair, Donna Fehlauer, Ross John Oxley, Simon Todd Northey, Reg Stevens, Robert Graham Davey; and Tania Davey; and
- (h) “Existing licensed premises provide better parking opportunities and accessibility.” - Ross John Oxley

Determination

- 73 Section 16 of the Act requires that the licensing authority should act without undue formality. In this regard, s 16(7) further provides that the licensing authority is not bound by the rules of evidence or any practices or procedures applicable to courts of record and the authority is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. Accordingly, although the Applicant has requested that I disregard some submissions of the interveners and objectors, which it claims were lodged out of time, I note that much of the information the Applicant has been critical of, merely seeks to respond to its own observations and criticisms of the other parties' submissions. I also note that the Applicant has responded to those issues and that there has therefore been no denial of procedural fairness. Consequently, I am of the view that it is in the public interest that the objections and interventions, as presented, be permitted into evidence.
- 74 While the rules of evidence do not apply to proceedings before the licensing authority, decisions of the authority must be made on the balance of probabilities and be based on the evidence before it. Furthermore, notwithstanding that s 5(2)(e) of the Act requires the licensing authority to provide as little formality or technicality as may be practicable, the evidence of the parties needs to be relevant, reliable and logically probative to assist the authority to assess the probability of the existence of the facts asserted in each case (refer *Busswater Pty Ltd v Director of Liquor Licensing* (LC 17 of 2010)).
- 75 Furthermore, while each application must be dealt with on its merits (refer s 33), the licensing authority has an absolute discretion to grant or refuse an application for any reason that it considers in the public interest (refer *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
- 76 Therefore, in determining whether the grant of an application is in the public interest, it is necessary for me to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 77 In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J, said:

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

in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.

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

78 In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, Buss J observed that:

“By s 5(2), in carrying out its functions under the Act, the ‘licensing authority’...shall have regard to the primary objects of the Act and to certain secondary objects.”

79 Accordingly, the factual matters which the licensing authority is bound to take into account in such a determination are those relevant to the primary and secondary objects of the Act as set out in s 5. The authority is also entitled (but not bound) to take into account those matters prescribed in s 38(4) of the Act as part of its public interest considerations.

80 The primary objects of the Act, as set out in s 5(1) are:

- (a) to regulate the sale, supply and consumption of liquor (s 5(1)(a));
- (b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor (s 5 (1)(b)); and
- (c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of, relevantly, the liquor industry in the State (s 5(1)(c)).

81 The matters set out in s 38(4) of the Act, which do not limit the licensing authority’s public interest assessment under s 38(2), include:

- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor (par (a));
- (b) the impact on the amenity of the locality in which the premises, or proposed premises are, or are to be, situated (par (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 (par (c)); and
- (d) any other prescribed matter (par (d))⁸.

82 The Applicant submits that the grant of the licence will provide for one-stop shopping convenience in Northam at the Centre, which is the main shopping centre in Northam. The Applicant also observed that one-stop shopping is not currently available in Northam at all. Aligned with this positive factor is the Applicant’s assertion that the

⁸ No ‘other...matter’ has been prescribed pursuant to s 38(4)(d).

proposed BWS Store will stock a number of product lines that are exclusive to Woolworths branded liquor stores and/or Dan Murphy's stores. The proposed store will occupy approximately 154 m² and customers will be able to access the proposed liquor store from within the Centre's common internal mall.

- 83 While the Applicant has lodged consumer evidence to help establish that the grant of the licence will cater to the requirements of consumers, I do not consider that this evidence is as compelling as the Applicant may claim, primarily because the intercept survey was carried out in front of the Woolworths Supermarket at the Centre and I therefore consider that the results of the consumer survey would be invariably skewed so as to represent the views only of customers of the Woolworths Supermarket and not those of the broader Northam community.
- 84 I also hold similar concerns about the document entitled *Research Findings: Proposed Northam BWS Liquor Store* by West Coast Field Services, dated October 2014, particularly where the Applicant has used this document to establish the measure of community support for the proposed BWS Liquor Store, by asserting that 55% of *liquor purchasers* [emphasis added] think that the proposed BWS Liquor Store is a good idea. The problem with this assertion is that it essentially ignores that the majority of persons interviewed (i.e. 50%) 'thought generally' that the establishment of the proposed BWS Store as part of the Centre in Northam was a bad idea, compared to 48% who 'thought generally' that it would be a good idea. The other two per cent of respondents were uncertain.
- 85 In my view, the Applicant's evidence also appears to ignore that:
- (a) 34% (the majority) of consumers surveyed prefer to purchase liquor from a standalone bottle shop and a further 18% prefer to purchase liquor through a drive through bottle shop attached to a hotel or tavern;
 - (b) of the consumers who thought the grant of the licence was a bad idea (i.e. 50% of all consumers), 71% indicated that there are enough liquor stores in the locality already and 40% indicated that they dislike the anti-social behaviour liquor stores bring; and
 - (c) of the consumers who thought the grant of the licence was a good idea (i.e. 48% of all consumers), only 84% indicated that they would combine a visit to the proposed liquor store as part of a trip to the Woolworths Supermarket.
- 86 In fact, the Applicant's survey data establishes that the majority of respondents would only use the proposed liquor store infrequently and furthermore that 31% of respondents are extremely unlikely to use proposed store at all.
- 87 However, notwithstanding these anomalies, I find that a consideration of all of the evidence and notorious facts, including the Applicant's established record as a licensee and its business model at other locations, together with the results of the consumer survey, support a finding that the grant of the application would cater to the

requirements of some consumers for liquor and related services as expressed in s 5(1)(c) of the Act. However, the application must also be considered in context with the other objects of the Act, including the Act's harm minimisation object found at s 5(1)(b) of the Act.

- 88 In this regard, the Applicant notes that the minimisation of alcohol-related harm is one of the primary objects of the Act; however, as observed by Ipp J in *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258, the harm minimisation object under the Act is not about preventing harm absolutely. Consequently, the Applicant acknowledges that the application is to be assessed in terms of the risk of any increase in harm and whether any potential increase in harm is unacceptable.
- 89 In terms of properly addressing harm or ill-health due to the use of liquor occurring in the locality, consistent with the direction provided in the Director's *Public Interest Assessment Requirements and Application Procedures* policy, I consider that the Applicant's PIA was somewhat deficient in that it should have identified the following groups in Northam, as persons who may be affected by the grant of the licence:
- (a) *Holyoake Northam – Wheatbelt Community Alcohol and Drug Service*;
 - (b) the *Fresh Start* Northam Recovery Centre, (a drug and alcohol treatment centre);
 - (c) the *Waminda House Women's Refuge*; and
 - (d) an *Alcoholics Anonymous* group (a drug and alcohol treatment centre).
- 90 However, notwithstanding this evident discrepancy, I note that the Applicant has clearly acknowledged that the SEIFA indices confirm that the Northam community is relatively disadvantaged, although the Applicant does not consider that the low SEIFA scores for Northam Shire and Northam support a negative conclusion that the community is at a higher risk for, or more susceptible to, alcohol related harm.
- 91 This view was not shared by the EDPH, who made strong representations that:
- (a) there is alcohol-related harm and ill-health occurring in Northam;
 - (b) some alcohol-related harm and ill-health in Northam is higher than the State;
 - (c) the application will offer purchasing convenience, which has the potential to influence drinking behaviours;
 - (d) the Applicant's definitive conclusion that its patrons will be at low-risk of harm is premised on contradictory and misapplied information; and
 - (e) in the context of a community experiencing higher than average levels of harm, harm minimisation strategies proposed by the applicant may be limited in their effectiveness, given packaged liquor is consumed away from the premises.
- 92 Despite the Applicant's claims to the contrary, the EDPH submitted that there is evidence from a variety of sources that alcohol is being consumed in Northam in a

manner that is contributing to both short term and longer term harm and ill-health outcomes, some of which are higher than State rates and in this context, the EDPH submitted that even moderate levels of ongoing alcohol-related harm or incidents can indicate that one or more structural, environmental and/or community factor(s) exist that support the problems to occur, making the potential for further harm greater if a new variable is introduced, such as a new liquor store.

- 93 In accordance with the observations of Edelman J in *Liquorland (Australia) Pty Ltd -v- Executive Director of Public Health* [2013] WASC 51, the EDPH submitted that in assessing the overall question of whether granting the application is in the public interest, it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level.
- 94 Evidence of existing alcohol-related harm in the locality relied upon by the EDPH included information relating to alcohol-related hospitalisation figures, treatment statistics and WA Police offence statistics. The EDPH also noted that unemployment in Northam (7.2 %) is significantly higher than the Northam Shire (6.6 %) and WA (4.7 %) and submitted that studies regarding the social determinants of drug use (including alcohol use), have found that:
- (a) socio-economic status is a key indicator linked to a cycle of alcohol and other problems; and
 - (b) that people from low socio-economic groups are likely to have poorer health outcomes due to tobacco use, drinking alcohol in a high-risk manner and other drug use.
- 95 The EDPH also submits that despite the Applicant's position that the increase in density of licensed premises has had little to no effect on the level of alcohol consumption throughout Australia, there is a significant body of research that demonstrates a positive relationship between alcohol availability in populations and a frequency and range of social and health problems. Furthermore, the EDPH submits that each of the reviews are consistent in their findings that, although the relationship is complex and may vary in magnitude over time and place, there is clearly a demonstrable, positive relationship between the availability of alcohol and associated harm, problems and ill-health.
- 96 After outlining the existing level of alcohol-related harm in the locality, the EDPH submitted that there are a number of characteristics of the proposed licensed premises that may contribute to that harm, including that:
- (a) BWS Northam will sell packaged liquor and will provide increased convenience for purchases, given its co-location with the Woolworths supermarket, which not only distinguishes it from other outlets, but also has the potential to contribute to alcohol-related harm in a community already experiencing problems higher than the State rate; and

- (b) while the Applicant claims that the venue will not affect consumer behaviour or consumption other than their place of purchase, the EDPH notes that accessibility and convenience can influence purchase and consumption behaviours and the evidence suggests at-risk groups are more sensitive to features considered to be cues/triggers to alcohol use, which can influence the amount of alcohol consumed, and related harm.
- 97 The EDPH also submits that the Applicant's claims regarding the SEIFA evidence was flawed and that the studies referenced by the Applicant failed to explore the impact of alcohol consumption in lower SES communities. In response to the Applicant's assertion that people who are intent on making poor decisions (i.e. in connection with the purchase and consumption of liquor) will continue on that path until educated otherwise, the EDPH submitted that this view is not consistent with internationally recognised literature, which demonstrates that there are a variety of factors that have been identified, at both the individual and societal level, which affect the levels and patterns of alcohol consumption and related problems, with the EDPH particularly noting that the World Health Organisation acknowledges that the availability of alcohol is one such environmental factor.
- 98 Likewise, Mr Slevin and Ms Stafford similarly noted there were a number of demographic factors specific to Northam that increases the risk of alcohol-related harms from the proposed liquor store, including that:
- (a) when compared with averages for the state of WA, Northam has a:
- (i) significantly higher level of unemployment (7.2% v 4.7%);
 - (ii) significantly higher proportion of Aboriginal people (7.1% v 3.1%);
 - (iii) significantly higher proportion of single parent families (18.7% v 14.5%);
 - (iv) significantly higher proportion of labourers (13.2% v 9.7%); and
 - (v) a low median weekly household income (\$983 v \$1,415); and
- (b) the *Drug and Alcohol Interagency Framework for Western Australia 2011 – 2015* recognises that people from regional, rural and remote communities and people in low socio-economic areas are 'at-risk' groups and Northam is classified as a relatively disadvantaged area by the SEIFA index, with the town of Northam having the lowest score (923) in the Wheatbelt region. According to Mr Slevin and Ms Stafford, these risk factors are clearly demonstrated in the statistics for alcohol related harm in the region, with the 2010 Health and Wellbeing Surveillance System for the Wheatbelt region showing that nearly half (44.8%) of the adults drank at levels that put them at risk of long term harm.

- 99 This issue was also raised by the EDPH, who submits that the socio-economic circumstances of communities can influence drinking behaviours and drinking behaviours can, in turn, influence socio-economic circumstances, i.e. the “cycle of economic disadvantage”, where unemployment exacerbates alcohol-related problems and there is evidence to show a link between unemployment and poor health and other psychological effects, also often associated with alcohol and drug use.
- 100 Both the EDPH and the joint submission of Mr Slevin and Ms Stafford, noted higher levels of alcohol-related hospitalisations in Northam, with a recent Surveillance Report by the Drug and Alcohol Office showing that the residents of the town of Northam were hospitalised 320 times, during the period of 2007-2011 for conditions related to alcohol, at a cost of \$2,020,355 or \$60.56 per capita. Relevant alcohol-related conditions considered in the Report included:
- (a) alcoholic liver cirrhosis;
 - (b) alcoholism;
 - (c) cancers;
 - (d) stroke;
 - (e) other alcohol-related diseases;
 - (f) road injuries;
 - (g) falls;
 - (h) suicide;
 - (i) assaults; and
 - (j) other alcohol-related injuries.
- 101 The EDPH also introduced evidence from the Regional Manager of WCADS to clarify how the existing liquor outlets in Northam are impacting her clients and can influence or trigger behaviour. This evidence includes that clients of the WCADS have reported that even walking past any retail liquor outlet is a trigger, which raises concerns that as the proposed BWS Store is to be located in the only shopping mall in Northam, “where families go to shop, get an icecream or a cup of coffee, this may be an ongoing trigger for our clients.” The Regional Manager also noted, based on her professional experience in working with WCADS clients, that “...it is difficult for clients to avoid liquor outlets. In small towns in the Wheatbelt, just going to purchase groceries where liquor is available leave them open to temptation.”
- 102 Accordingly, the EDPH submitted that it is relevant to consider that, if the application is granted, persons in the community will be presented with additional visual cues to purchase alcohol whenever they do their shopping, which is likely to prompt impulse purchases as part of somebody’s day-to-day life rather than requiring a specific trip to the purchase alcohol.

103 While the Applicant attempted to discredit the evidence of the Regional Manager by asserting that the coexistence of the WCADS next door to an existing liquor store has not caused any concerns and by referring to the evidence of the Regional Manager as “views unsupported by research”, I have observed that in *Liquorland (Australia) Pty Ltd -v- Executive Director of Public Health* (supra), Edelman J considered the evidence of service providers as “expert evidence”, recognising that such evidence ‘had considerable weight’, due to the service providers’ ‘considerable expertise’ in dealing with alcohol related harm. Accordingly, I likewise consider that the testimony of the service providers in these proceedings have strong evidentiary value.

104 In relation to the coexistence of the WCADS next door to a liquor store, the Regional Manager explained that her clients are directly impacted by empty alcohol packaging being littered next door to the office and also exhibit unusual behaviour in connection with the liquor store, including appearing embarrassed when they are observed to go to the liquor store; going the long way around the block when approaching the liquor store and walking past counsellors without saying hello, when they would normally do so. Furthermore, I have also noted the EDPH’s reference to the observations of Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director, Public Health* (supra), that:

“...It is not merely the location of the service providers which is relevant to the exposure of ‘at-risk’ persons to cheap alcohol. A more relevant question is where those ‘at-risk’ people live and whether they will encounter the proposed store on their daily travels, including to the service providers.

Even if there were an absence of evidence that the existing liquor outlets were having a negative impact on the ‘at risk’ persons attending the community service establishments, it would be more relevant that the proposed new premises would have a negative impact on these at risk persons.”

105 In addition to the evidence of the Regional Manager, the objection of Major Raymond Reeves on behalf of The Salvation Army Northam Corps likewise expresses concern that the grant of the licence will lead to an increase in anti-social behaviour, a view informed by The Salvation Army’s experience over the years in dealing with the negative effects of alcohol and its impact on individuals and their families. Because of this extensive experience, Major Reeves also expresses concern that the grant of the licence could lead to an increase in financial difficulties, particularly given that the Salvation Army Northam constantly deals with people unable to cope with their financial position and due to Northam having a high percentage of low socio-economic households that could further suffer through the increased availability of liquor.

106 The Applicant likewise submits that the views of Major Reeves are unsubstantiated because no evidence has been supplied to support them. However, I afford Major Reeves’ comments significant weight due to the Salvation Army’s considerable experience in dealing with people suffering from alcohol-related harm.

- 107 Similarly, while admitting difficulty in providing objective figures to counteract some of the Applicant's claims, I have likewise recognised Dr Kevin Christianson's expertise, which has been informed by his personal experience of working as General Practitioner in Northam for 28 years (including time as a Visiting Medical Officer at the Northam Hospital and seeing both in-house and casualty patients) and consider that his observations regarding the increase in incidence of alcohol-related problems in Northam and his General Practice, to have strong evidentiary value.
- 108 Mr Slevin and Ms Stafford also noted that in 1988, the world-leading cancer agency, the International Agency for Research on Cancer, classified alcoholic drinks and the ethanol present in those drinks, as Group 1 carcinogens, which is the same classification as tobacco and asbestos. According to Mr Slevin and Ms Stafford, this is relevant to the existing harms in the locality, given that the:
- (a) Wheatbelt region has a significantly higher rate of hospitalisations for alcohol-related cancers (1.20) than the WA state population;
 - (b) rate of hospitalisations for alcohol-related cancers in male residents only was even higher (1.32); and
 - (c) overall, this equated to 203 hospitalisations between 2007 and 2011 for cancer in which the consumption of alcohol was a causal factor.
- 109 It was further submitted that between 2007 and 2011, thirty cancer deaths in the Wheatbelt could be attributed to the long term consumption of alcohol, with two thirds of them being in men.
- 110 According to Mr Slevin and Ms Stafford, this evidence shows that the burden of alcohol-related harm is already high in Northam, particularly among adult males.
- 111 The Applicant's response to these concerns was that it has been well established that smoking is the leading cause of cancer and not alcohol use and further, that the removal of colon polyps can prevent colorectal cancer. The Applicant also submitted that other risk factors include obese persons; persons with asthma and persons with arthritis; and concluded that the greatest risk of succumbing to cancer in the Wheatbelt District is not alcohol use, but rather other contributing health factors, such as obesity in females and males smoking.
- 112 I find the Applicant's submissions in respect to this matter to be unhelpful, particularly when the evidence of Mr Slevin and Ms Stafford clearly maintain that alcohol is a causal factor. I also find the Applicant's conclusion that 88 drink driving offences over a space of three years is not a significant concern for a country town to be similarly unhelpful, particularly given the EDPH's submission that publically available road safety documents clearly indicate that alcohol has been a feature in a number of fatal and serious crashes in the Wheatbelt area, together with the Licensee Objectors' submission that:

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- (a) the WA Police were so concerned about the number of fatalities occurring in the Wheatbelt (of which Northam is a part) that they conducted a major traffic operation across the Wheatbelt on Friday 6 March 2015; and
- (b) the RAC is currently running the “Elephant in the Wheatbelt” campaign where it has constructed a large elephant from cars that have crashed in the Wheatbelt in order to bring awareness to the number of fatalities on Wheatbelt roads, where drink driving has been identified as a major contributing factor.
- 113 Mr Slevin and Ms Stafford also submit concerns about alcohol and young people in Northam; issues which were similarly raised by the Hon Paul Brown MLC, who was relevantly concerned with:
- (a) the increasingly disengaged indigenous youth in Northam, who also face greater social disadvantage from the effects that cheap alcohol has had on their cultural group for many years; and
- (b) community concerns about underage binge drinking, particularly that of young males within the Northam community, and the increase in anti-social behaviour that is a by-product of that.
- 114 In response to the Applicant’s assertion that “disengaged” youth is something that is experienced across every community, Mr Brown further submits that:
- (a) youth prison detention amongst Aboriginal youth in WA suggests that there is a chronic problem needing to be addressed;
- (b) in Western Australia, the rate of Aboriginal youth detention is the highest in the country and from across the whole of WA, about 1100 Aboriginal children are behind the bars of the State’s one juvenile prison and Northam is a town with a large Aboriginal community, which is a predominantly young population, i.e. approximately half under the age of 18;
- (c) according to the Western Australian Department of Regional Development and Lands, nearly five % of the population of the Wheatbelt RDA region identify as Indigenous people; and
- (d) substance abuse among young people is prevalent with alcohol being the most common substance used by youth; and is a problem that affects everyone in the community.
- 115 While acknowledging that Mr Brown is not a health expert, I nonetheless note his position as a Member of Parliament, which provides him a unique position to interact with the people of Northam and to hear and represent their concerns.
- 116 The Commissioner also made representations on the basis that if the application is granted, public disorder or disturbance would be likely to result and on other relevant public interest matters, including high levels of alcohol-related domestic violence;

although I note that the Commissioner's intervention was primarily focussed on the imposition of trading conditions on the licence to mitigate such harms.

- 117 In my view, the evidence in this matter indicates a tension between advancing the various objects of the Act, particularly object 5(1)(b), regarding the minimization of alcohol-related harm and object 5(1)(c), which relates to catering to the requirements of consumers for liquor and related services. In such circumstances, I must weigh and balance those competing interests ((refer *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258) and decide upon the degree of importance to be attributed to each of the relevant factors, as proven by the evidence in each case.
- 118 It is also clear to me from the evidence of the EDPH and the Regional Manager of the Northam WCADS, the Commissioner, Mr Slevin and Ms Stafford, Dr Christianson and the Hon Paul Brown MLC, that there is a considerable level of alcohol-related harm and ill-health in the community of Northam and generally in the Wheatbelt region, of which Northam is a part.
- 119 I further consider that this evidence also points to the potential for alcohol-related harm and ill-health to increase as a result of significantly increasing the availability of packaged liquor in the locality, if the application is granted.
- 120 While I have noted the Applicant's submissions regarding Northam being a Super Town and the associated projected population growth, I consider that these population forecasts must be evaluated against observations that there has been no such significant growth to date.
- 121 Furthermore, in relation to the Applicant's claims regarding BWS Stores stocking a number of product lines that are exclusive to Woolworths branded liquor stores and/or Dan Murphy's stores that would not otherwise be available in the locality, I note that in *Liquorland (Australia) Pty Ltd v Commissioner of Police & Others* (LC 18/2015), the Liquor Commission observed that the provision of a wider or alternative range of liquor products is not, of itself, a strong reason, or even a reason, to introduce another liquor store into a shopping centre or precinct.
- 122 Whilst the degree of harm that may result from the grant of the application is difficult to quantify, the risks identified by the objectors and interveners, must nonetheless be balanced against the purported benefits that may be derived from the grant of the application. In *Liquorland (Australia) Pty Ltd v Commissioner of Police & Others* (supra), the Liquor Commission observed that the proper development of the liquor industry must be considered within the scope and terms of the Act, which requires a careful consideration of the broader public interest and "simply because a service is as convenient, or more convenient than that currently available does not, of itself, satisfy the primary and secondary objects or the public interest as specified in the Act."

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- 123 Therefore, after having regard to all of the evidence and notorious facts and weighing and balancing the competing interests in this matter, I consider that the grant of another liquor store licence in Northam presents an unacceptable risk of an increase in alcohol-related harm and/or ill-health in the community, as evidenced by the interveners and relevant objectors, and that this potential risk far outweighs the marginal consumer benefit associated with one-stop shopping at the Centre.
- 124 In arriving at the determination, I have observed that the locality is well serviced for liquor outlets and have taken particular note of the Applicant's concession that the liquor market in Northam is already competitive.
- 125 Accordingly, I am of the view that the grant of the application poses an unacceptable risk to both Northam Shire and Northam and the application is therefore refused.
- 126 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 127 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Brett Snell
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING