

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** TDMAC PTY LTD

**PREMISES:** CELLARBRATIONS AT NORTHBRIDGE

**PREMISES ADDRESS:** 342 WILLIAM STREET PERTH

**APPLICATION ID:** A000205322

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

**DATE OF DETERMINATION:** 27 JUNE 2017

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### **Introduction**

- 1 TDMAC Pty Ltd (the applicant) seeks the conditional grant of a liquor store licence for premises located at 342 William Street, Perth and to be known as Cellarbrations at Northbridge. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Objections to the grant of the application were lodged by the Commissioner of Police (the Commissioner); Tindara Tarricone (licensee of the Lake Street Liquor Supply) and Chris White. The Chief Health Officer (CHO) intervened in the application.
- 3 The application will be determined on the written material submitted by the parties as permitted by ss 13 and 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

### **The case for the applicant**

- 4 The premises the subject of this application currently operates under a special facility licence which authorises the sale and supply of general cooking wine together with mirin and sake for cooking. The applicant now seeks to establish a browse style liquor store of around 70m<sup>2</sup> to cater to people who shop at the Asian grocery stores nearby, or who dine at the unlicensed restaurants in the unofficial Chinatown in William Street. The applicant submits that there is presently no liquor store in this area. According to the applicant, the application does not add a new liquor licence to the locality, but simply expands the size of the licensed area and range of liquor products that will be available to provide more flexibility for the business and a more comprehensive packaged liquor service.
- 5 The applicant submitted that there are about 29 unlicensed Asian themed restaurants in the area, and patrons of these premises are one of the target markets of the applicant. Some local restaurant operators were questioned by the applicant and they

support the application because it will benefit their businesses and bring more customers.

- 6 The applicant proposes to sell a range of mainstream of beer, wine and spirit products together with some Asian liquor products. The applicant provided details of existing licensed premises in Northbridge, and stated that none of the existing packaged liquor outlets are within convenient walking distance for the applicant's target market or will stock the number of Asian liquor products that the applicant proposes to offer. According to the applicant, the nearest packaged liquor outlet is about 450 metres away and this may be difficult for someone carrying shopping bags. In this regard, the applicant submitted that it is open for the licensing authority to conclude that people who like to shop or dine along William Street are greatly inconvenienced by not having a liquor store featuring Asian liquor products near the shops and restaurants.
- 7 The applicant further submitted that the grant of the application may afford shoppers in William Street the convenience of one-stop shopping, citing the decision of the Supreme Court in the Dan Murphy's Bicton case.
- 8 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided information on the surrounding locality; demographics of the locality; outlet density and generally addressed the matters relevant to s 5 and s 38(4) of the Act.
- 9 The applicant stated that there are 83 licensed premises within a 2km radius of the applicant's premises of which 11 are permitted to sell packaged liquor. This consisted of 8 liquor stores, 2 taverns and a special facility licence. In respect of the existing rate of alcohol-related harm in the area, the applicant provided data from the Drug and Alcohol Office which indicates that the rate of alcohol-related hospitalisations in the area was significantly higher than the corresponding State rate. The applicant also provided assault data for Northbridge. In 2014 there were 381 assaults; in 2015 there were 419 assaults and in 2016 (January to October) there were 322 assaults. The applicant surmised that much of this existing harm occurs in the nightclub/bar area, and not in the locality immediately surrounding the subject premises.
- 10 The applicant lodged witness surveys and letters from local business operators to support its application.
- 11 According to the applicant, its target customer base is greatly inconvenienced by the lack of adequate packaged liquor services within a reasonable walking distance of the Asian grocery shops and unlicensed restaurants along William Street.

### **Submissions and evidence of the objectors**

#### *The Commissioner of Police*

- 12 The Commissioner objected on the following grounds:

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- the grant of the application would not be in the public interest; and
  - the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor.
- 13 The Commissioner noted that the applicant has a special facility licence which only permits the sale of liquor for cooking purposes and while the applicant may not be adding a new liquor licence, there is a significant change in the licence type which permits additional packaged liquor to be available for purchase. This, according to the Commissioner, has the same effect of adding a new liquor licence to the locality because packaged liquor not limited to cooking purposes will be available for purchase and consumption off the premises.
- 14 The following crime statistics were provided by the Commissioner:
- from 1 January 2014 to 31 December 2015, there were 6,128 relevant offences in the suburbs of Perth, East Perth and Northbridge, of which 918 were alcohol-related;
  - from 1 January 2015 to 31 December 2015, there were 7,616 relevant offences in the suburbs of Perth, East Perth and Northbridge of which 854 were alcohol-related; and
  - in 2014-2015 calendar year, 7,199 calls for police assistance were received for the suburb of Northbridge, while for Perth, this figure was significantly higher at 28,372 calls for police assistance.
- 15 It was submitted by the Commissioner that alcohol significantly contributes to and influences crime rates within the locality. For example, in 2014, 41% of non-domestic assaults and 55% of domestic assaults were alcohol-related and 50% of disorderly behaviour offences were alcohol-related. In 2015, 34% of non-domestic assaults and 40% of domestic assaults were alcohol-related, while 45% of disorderly behaviour was alcohol-related.
- 16 In addition to the rates of offending in the locality, the Commissioner noted that the rate of alcohol-related hospitalisations for the area was significantly higher (1.18 times) than the State rate.
- 17 The Commissioner cited research studies to support his grounds of objection, including:
- the longitudinal study by Michael Livingston, which concluded that packaged liquor outlets are a significant contributor to violence and chronic alcohol-related health problems and the density of general and packaged liquor outlets were both positively associated with rates of hospital admissions;
  - a 2012 study from New Zealand where the authors found that the areas with the greatest geographic access to alcohol outlets, regardless of licence type and

category, recorded the highest incidences of serious and violent crime, with off licence premises being a significant predictor of area level crime, regardless of geographic distance; and

- a 2016 report based on research into off-site outlets and alcohol-related harm by the National Drug Law Enforcement Research Fund which concluded that off-site alcohol sales and total volume of alcohol sales within a region are important predictors of assault and there is strong international evidence for a specific association between off site outlet density and violence.

18 The Commissioner submitted that the locality surrounding the proposed liquor store is overrepresented with at-risk groups: which include children and young people, migrant groups from non-English speaking countries and unemployed persons. The Commissioner also noted that 'rental tenure' is much higher at 62.3% than the State rate (29.2%) and State Housing Authority rental tenure is higher at 4.8% (WA 4%). Further, in terms of at-risk persons in the locality, the Commissioner provided the following evidence:

- The Salvation Army Perth Headquarters is located directly across the road from the proposed liquor store;
- another Salvation Army premises, called The Beacon, which provides services for homeless and disadvantaged people, is located in Aberdeen Street;
- St Bartholomew's House, an organisation that provides accommodation and assistance to males aged 18 years and over who are homeless or suffering mental health problems is situated at 7 Lime Street, East Perth;
- the Ruah Community Services, an organisation that provides accommodation and assistance to homeless or people with alcohol and drug addiction problems has a 'drop in centre' at 33 Shenton Street, Northbridge (about 650 metres from the applicant's premises);
- "Manna", a volunteer charity serving the vulnerable and homeless is about 1.2km from the applicant's premises; and
- Bridge House, operated by the Salvation Army, provides alcohol and drug crisis intervention programs and is situated about 960 metres from the applicant's premises.

19 Annexed to the Commissioner's objection was a letter from Major Brad Watson of the Salvation Army who stated that within the area surrounding the proposed liquor store there are many homeless and street people who are at significant risk of miscalculated or irresponsible alcohol service and some of these persons are previous or current non-residential rehabilitation clients and many are at-risk of co-morbid and complex health issues either related to or affected by alcohol use.

- 20 “Operation Safe Place” is a partnership between the WA Police and Mission Australia which involves identifying at-risk and unsupervised underage youths roaming the streets of Perth and Northbridge and removing them from the streets to a supervised facility. The Commissioner advised that from 8 April 2016 to July 2016, 168 youths were identified and taken to the facility: 126 of those youths (77%) were indigenous and 102 were identified as being at-risk, as defined in s 41 of the *Children and Community Services Act 2004*.
- 21 In questioning the probative value of the applicant’s consumer surveys, the Commissioner provided a statement from one of the supposed respondents who stated that he did not complete the survey form as submitted, and his signature on the survey form has been forged.
- 22 Further, the Commissioner noted that the applicant stated in its PIA that there are 83 licensed premises within a 2km radius of the proposed liquor store, but only 11 are permitted to sell packaged liquor. However, the Commissioner identified 16 liquor stores and numerous hotels and taverns within the locality that can sell package liquor.
- 23 In conclusion, it was submitted by the Commissioner that the locality surrounding the proposed liquor store, particularly Perth and Northbridge, suffers from a high level of alcohol-related harm as evidenced by the crime and health data. It was submitted that the likely degree of harm as a result of the grant of the application will be such that, the level of harm experienced in the locality will be unacceptable. There are vulnerable and at-risk groups in the locality that may be negatively impacted should the application be approved. Consequently, it was submitted that the grant of the application would not be in the public interest.

*Ms Tindara Tarricone*

- 24 Ms Tarricone objected on the grounds permitted under s 74(1)(a), (b) and (g) of the Act. Ms Tarricone critiqued the applicant’s evidence and submitted that:
- the locality is well serviced by packaged liquor outlets and therefore the requirements of consumers for packaged liquor are currently being met because:
    - 194 respondents, of the 238 surveys lodged by the applicant, indicated that the locality is well serviced with packaged liquor facilities featuring Asian liquor products as well as mainstream liquor products; and
    - 90 respondents indicated that the existing packaged liquor outlets they use are conveniently located for their purposes;
  - many of the respondents to the surveys live a considerable distance outside the locality;
  - there are already three packaged liquor outlets within walking distance of the proposed liquor store;

- a liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet would not be in accordance with the provisions of the Act;
- there is an at-risk group (migrant groups from non-English speaking countries) present within the locality which significantly increases the prospect that the proposed liquor store, with its increased range of liquor, will contribute to harm or ill-health in the locality; and
- the applicant's own witnesses have clearly shown that the applicant's current licence with its limited range that is permitted to be sold, well serves the needs of the public in the locality, and is convenient.

25 It was also submitted that the evidence filed by the applicant was unreliable and tainted because some evidence was given by the applicant's own employees; surveys were completed by the applicant's own representative; and the applicant omitted to identify all the packaged liquor outlets in the locality, including Lion Oriental Foods Co, which is about 1km from the applicant's premises and provides a wide variety of Asian liquor products.

*Chris White*

26 Mr White submitted that:

- WA Police crime statistics show there has been on average over 1 assault per day in 2016 in Northbridge;
- Salvation Army Fortress clientele includes homeless people and substance abusers;
- large numbers of people from the Northbridge commercial precinct and passing traffic patronising the applicant's premises will cause disturbance to residents of the adjacent residential building; and
- residents in Washing Lane will be adversely affected by street drinking at night and people moving between Weld Square and the proposed liquor store. Drunk Northbridge patrons will be attracted to Washing Lane to quickly consume more alcohol before entering venues where the alcohol is more expensive.

#### **Submissions and evidence of the intervener**

27 The CHO intervened to make representations regarding the harm and ill-health concerns related to the application and in particular:

- there are factors associated with the proposed location, and characteristics of the liquor store, that have the potential to increase the risk of harm in Northbridge;

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- there are at-risk groups in the locality who currently experience alcohol-related harm;
  - local stakeholders advise that, alcohol, particularly packaged liquor, is a key contributor to harm and problems experienced in Northbridge; and
  - the harm and ill-health concerns indicated by the literature regarding the integration of alcohol sales alongside grocery items.
- 28 According to the CHO, Northbridge already experiences high rates of alcohol-related harm and for the period 1 July 2015 to 30 June 2016 there were 452 assaults in Northbridge, of which 47% were alcohol-related. While some of the assaults may be the result of liquor consumed on licensed premises, according to the CHO, stakeholders advise that people drinking packaged liquor also experience alcohol-related harm.
- 29 The CHO submitted that there is a significant body of research spanning more than 30 years demonstrating a positive relationship between the availability of alcohol and the range of social and health problems. It was submitted that the grant of the application will increase the physical availability of liquor in Northbridge and research indicates that one way to reduce violence is to create and implement public policies to reduce alcohol availability in violence-prone areas of communities.
- 30 The CHO noted that there is an evidence-based understanding that alcohol-related problems in the Western Australian community are widespread and not limited to specific groups. However, some members of the community experience greater amounts of alcohol-related harm, or are more vulnerable than others. It was submitted that alongside broader community factors, understanding the vulnerabilities of these at-risk persons in the context of a new liquor outlet, is an important harm minimisation consideration.
- 31 In this regard, the CHO stated that there are social services patronised by individuals experiencing alcohol-related harm and ill-health within the locality, specifically, people gathering at public places, such as Weld Square, Russell Square, Robertson Park and Hyde Park, which are within walking distance of the proposed premises. Some of the social service providers include:
- The Nyoongar Outreach Service (NOS), a community-based service that deals with social and welfare issues within Northbridge and the Northern corridor. NOS provides several services including:
    - transporting intoxicated people to sobering up centres, most common during the day time hours;
    - finding accommodation for homeless people;
    - working with other service providers; and

- attending to juveniles street drinking and at risk after 9 p.m.

According to a representative of NOS, most people who they have contact with in Weld Square and the surrounding area are already affected by, and vulnerable to, alcohol-related problems such as alcohol dependence. Homeless people who frequent the surrounding parks and reserves are most likely to buy their liquor from the closest store within this circle of park areas. During the 2015/16 financial year, there were 3995 clients presenting to the Northbridge/City of Vincent outreach patrols, with 91% of those clients being affected by alcohol or drugs.

- Youthbeat (Mission Australia) is a comprehensive program providing both case management and mobile outreach to young people in Northbridge and the inner-city areas. Clients assessing the service are usually aged between 12 and 19 years of age and young people are often intoxicated when they present to the Youthbeat service.
- Passages Resource Centre is a referral service for homeless or street present young people between the ages of 12 and 25.
- Manna is one of the largest providers of meals for the disadvantaged and as many as 250 men, women and children gather each day at Weld Square to receive food.

32 The CHO also submitted that research shows that the sale of alcohol from supermarket style stores can lead to increased consumption and limiting such circumstances is an important harm minimisation strategy. It was stated that Integrating liquor alongside grocery items presents liquor as a harmless, 'everyday' commodity.

33 In examining the applicant's evidence, the CHO noted that the applicant, in its PIA, identified 11 packaged liquor outlets within a 2km radius of the proposed liquor store (comprising 8 liquor stores, 2 taverns and one other premises) however, there are a further 7 liquor stores within a 2km radius of the proposed store which the applicant failed to mention.

34 In conclusion, the CHO submitted that this application presents harm or ill-health concerns based on the locality of the premises; which experiences high levels of alcohol-related harm and contains several at-risk groups. The impact of the co-location of packaged liquor products and grocery items on levels of consumption and harm is also a matter for consideration. The CHO recommended that if the application is granted, conditions should be imposed on the licence to mitigate the risks associated with the operation of the premises.

### **Legislative framework**

35 In determining this application, I have been guided by the following legal principles.



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- 36 An applicant for the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(2) of the Act). An applicant must therefore adduce sufficient evidence to discharge this burden.
- 37 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 38 The burden of establishing the validity of any objection lies on the objector (s 73(10)), however an intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321);
- 39 The factual matters which I am bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).
- 40 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
  - to minimise harm caused to people, or any group of people, due to the use of liquor; and
  - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 41 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
  - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 42 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.

- 43 Section 16 provides that the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority should also act without undue formality and is not bound by the rules of evidence.
- 44 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).
- 45 Section 33(1) provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest.

### **Determination and reasons**

- 46 For the reasons which follow, and based upon the evidence presented, I am of the view that the applicant has failed to discharge its onus under s 38(2) of the Act and satisfy me that the grant of the application is in the public interest.
- 47 The applicant seeks to establish a liquor store as part of its Asian supermarket located on William Street in Northbridge. There is an existing special facility licence attached to the premises, which only authorises the sale of wine for cooking.
- 48 It was submitted by the applicant that this application is particularly targeted at those shoppers who are looking for Asian groceries, and people dining in the unlicensed restaurants, along William Street and these people are greatly inconvenienced by the lack of adequate packaged liquor services within a reasonable walking distance. However, I find the applicant's evidence to be unconvincing and, in part, flawed.
- 49 The applicant states there will be an emphasis on Asian liquor products, however, an examination of the applicant's proposed stock list indicates that there are 522 mainstream liquor products and 59 Asian products, consisting of 50 Chinese spirits and 9 Chinese beers. Overwhelmingly, the applicant's business will be based on selling mainstream liquor products like most existing packaged liquor outlets.
- 50 The applicant, in its PIA, stated that there are 83 licensed premises within a 2km radius of the proposed liquor store, of which 11 of these venues are permitted to sell packaged liquor. These 11 venues consist of 8 liquor stores, 2 taverns and a special facility licence. However, the evidence of the objectors and intervener is that there is an additional 7 liquor stores and numerous other hotels and taverns within a 2km radius of the premises which the applicant has failed to identify. In other words, there are 15 liquor stores together with numerous hotels and taverns with a 2km radius of the applicant's proposed premises.
- 51 In response to this apparent omission to correctly identify the existing licensed premises within the locality, the applicant submitted that it considered all dedicated packaged liquor outlets within walking distance of the subject premises (400m), being the premises most likely to be a viable alternative to what the applicant proposes.

However, many of the premises listed by the applicant in its PIA are more than 400m away from the proposed liquor store. The applicant's submissions on this issue do not make sense.

52 The applicant submitted that there are 34 unlicensed restaurants in the area, of which 29 are Asian themed, which is one of the target markets for the applicant. I note that these restaurants are spread throughout Northbridge and parts of the CBD and therefore contrary to the applicant's claims that nearby liquor outlets are "*not within walking distance of the BYO Asians restaurants.*" I would also note that not all unlicensed restaurants permit BYO. In this regard, the Commissioner identified seven unlicensed restaurants referred to by the applicant that do not allow BYO.

53 To support its application, the applicant lodged various witness surveys. The Commissioner provided a statement from one of the respondents who stated that he did not complete the survey form as submitted and his signature on the survey form was forged. Further, an examination of the survey data indicates that:

- a large percentage of respondents to the surveys indicated that the locality is well serviced with packaged liquor facilities featuring Asian liquor products as well as mainstream liquor products; and
- 90 respondents indicated that the existing packaged liquor outlets they use are conveniently located for their purposes.

54 In determining this application, I must have regard to the primary and secondary objects of the Act. Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case (refer *Lily Creek*).

55 The stated benefits from the grant of the application is the added convenience to persons who shop at the Asian grocery stores on William Street or who dine at the nearby unlicensed restaurants. This is directed towards object 5(1)(c) of the Act. This added convenience is essentially having a packaged liquor outlet within walking distance of the grocery stores and unlicensed restaurants.

56 Object 5(1)(a) of the Act is to regulate the sale, supply and consumption of liquor, and this statutory policy of regulation is consistent with a measured approach to the granting of licences under the Act (per Heenan J in *Woolworths Limited v Director of Liquor Licensing* [2012] WASC 384). In LC 18/2015, the Liquor Commission, having quoted with authority the words of Heenan J in *Woolworths*, went on to state:

*"A measured approach 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.*

*Proper development of the liquor industry is not synonymous with the unrestricted expansion of liquor outlets to satisfy a desire on the part of some consumers of liquor or liquor related services for a relatively insignificant or inconsequential modification or improvement to the level of convenience. The long term interests of (the – sic) liquor industry are best served by a controlled development of the industry having regard to public perceptions of the industry and the overall health and well being of the community.”*

57 The Liquor Commission further stated, in the same decision:

*“A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission’s view, in accordance with the provisions and intent of the Act.”*

58 Therefore, in consideration of the applicant’s evidence, I find that the stated benefits to the community from the grant of the application are marginal at best, and significantly diminished by the presence of numerous packaged liquor outlets in the locality, which provide both mainstream liquor products and Asian liquor products. This conclusion is supported by the applicant’s own survey data. Also, given that many of the respondents to the applicant’s survey travel from well outside the locality, they could access multiple liquor outlets in those travels.

59 The licensing authority has acknowledged in numerous decisions that Northbridge experiences high rates of alcohol-related harm. Although there may have been a downward trend in the rate of offending in Northbridge, this does not mean that the level of alcohol-related offending in the locality is acceptable. The applicant postulates that much of this harm occurs in the nightclub/bar area, and not in the locality immediately surrounding the subject premises. I note that the proposed liquor store is a very short distance from the main trading precinct of Northbridge. Further, it is quite possible that persons who consume liquor in the unlicensed restaurants in the area (the applicant’s target clientele) may then proceed to the nightclubs and bars in Northbridge, consuming more alcohol and placing themselves at risk. Pre-loading is not uncommon by people attending licensed venues in Northbridge.

60 Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 held that where object 5(1)(b) was relevant to the determination of an application there are four steps to be undertaken, namely:

- make findings that specifically identified the existing level of harm and ill-health in the relevant area due to the use of liquor;
- make findings about the likely degree of harm to result from the grant of the application;

- assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- weigh the likely degree of harm, so assessed, together with any other relevant factors to determine whether the applicant has satisfied the licensing authority that it was in the public interest to grant the application.

61 It should be noted that in respect of the above, the factual finding is to “likely” alcohol-related harm and ill-health. I am not required to find, as a fact, that particular harm *will* occur as a result of the grant of the application, or to find a causal link. The exercise is necessarily predictive. Ipp J in *Lily Creek* stated that:

*“whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to at 516 in Malec v JC Hutton Pty Ltd, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.”*

62 The evidence of the Commissioner and the CHO (offence, assault and hospitalisation data) highlighted the existing level of alcohol-related harm in the locality surrounding the proposed liquor store and the presence of at-risk persons in the locality who are likely to be negatively impacted by the grant of the application. The evidence of Major Brad Watson of the Salvation Army and other service providers is that there is a significant number of homeless and street people who are vulnerable to alcohol abuse within the area surrounding the proposed liquor store. There was evidence that at-risk persons, who gather in the surrounding parks and reserves including Weld Square, are already affected by, and vulnerable to, alcohol-related problems and the applicant’s proposed premises will be close to these parks and reserves and because of this convenient location, is likely to be patronised by these at-risk persons. There is also evidence of young people in the area being affected by alcohol and requiring assistance and counselling services.

63 Based on the evidence presented by the Commissioner and the CHO, I find that there is a high rate of pre-existing harm and ill-health caused by the use of liquor in the locality surrounding the proposed liquor store.

64 The evidence establishes that there are at-risk persons who are vulnerable to alcohol abuse in the area and I find that the grant of the application will increase the pressure on these individuals to deal with their problems and would be counterproductive to the work undertaken by the various service providers in the area. The grant of the application will increase the physical availability of packaged liquor in Northbridge and there is evidence of a positive relationship between the availability of alcohol and the frequency and range of social and health problems together with evidence that packaged liquor outlets are a contributor to violence.

- 65 I am satisfied, on the balance of probability, that over time, the grant of the application is likely to contribute to the existing high rate of alcohol-related harm and ill-health in the locality, and I find that this likely increase poses an unacceptable risk.
- 66 Consequently, when I weigh the marginal benefits to the community from the grant of the application against the findings I have made in respect of the likely increase in harm and ill-health, I am of the view that greater weight should be given to the harm minimisation object of the Act over any other competing object. As I have already observed, the applicant's evidence is far from compelling. In my view, the applicant has failed to discharge its burden under s 38(2) of the Act.
- 67 In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:
- “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.”*
- 68 In consideration of the totality of the evidence presented and in accordance with the discretion afforded the licensing authority under s 33(1) of the Act, I find that the grant of the application is not in the public interest. The welfare of the public is best served by the refusal of this application.
- 69 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.
- 70 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING