

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: KUNUNURRA LIQUOR PTY LTD

PREMISES: LIQUOR BARONS KUNUNURRA

PREMISES ADDRESS: 116 COOLIBAH DRIVE KUNUNURRA

APPLICATION ID: A000177322

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

DATE OF DETERMINATION: 15 DECEMBER 2015

Introduction

- 1 This is an application by Kununurra Liquor Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be known as Liquor Barons Kununurra and located at 116 Coolibah Drive, Kununurra. The application is made pursuant to s 47 and s 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Pursuant to s 74 of the Act, objections to the application were lodged by the Commissioner of Police (the Commissioner), the Australian Broadcasting Corporation (ABC), Dr Robert Phair and Kimberley Accommodation (East) Pty Ltd (licensee of Hotel Kununurra) (licensee objector). The Executive Director Public Health (EDPH) intervened in the application pursuant to s 69 of the Act.
- 3 The application will be determined on the written materials lodged, as permitted under s 13 and s 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

The applicant's evidence and submissions

- 4 The proposed liquor store will be located in the "town centre zone", which is a commercial precinct containing retail outlets, a Subway fast food store and business offices including ABC Radio, real estate, I.T. services, art gallery and legal services. According to the applicant, the liquor store is a new concept for the locality because it will provide a comfortable, convenient, modern browse style liquor store with a fashionable fit-out and supply a selection of fine wines, premium beers and spirits.
- 5 The proposed liquor store will be approximately 174m² and feature 13 cool room doors which will provide ample space for chilled liquor products for the convenience of shoppers. The cool room will be approximately 52m². It is proposed to also offer ancillary products and services such as cool drinks, water and juice; ice; wine stoppers and accessories and gourmet cheeses, olive oils and other products sourced from

Margaret River. The applicant also proposes to establish a wine club, with fortnightly seminars and wine tastings.

- 6 The applicant submitted a Public Interest Assessment (PIA) to support its application. According to the applicant, Australian Bureau of Statistics demographics show a regional locality with positive socio-economic indicators of employment, income, rent and mortgage repayments. This indicates a stable population with high employment rates leading to higher than average income. It was also submitted that the population of the town is expected to grow substantially in the future and tourism remains a strong contributor to the local economy.
- 7 Although Kununurra has a high Aboriginal population (25.8%), this is lower than other major towns in the Kimberley, such as Broome (32.2%), Wyndham (51%), Fitzroy Crossing (66.6%) and Halls Creek (74.5%). It was therefore concluded by the applicant that while this at-risk group is over represented in the locality when compared to the State average, in a regional context, the figure is low. It was also submitted that employment in mining, construction, transport and warehousing in Kununurra and Wyndham has led to a strong local economy and a lower dependence on government assistance.
- 8 In acknowledging that restrictions have been imposed on the sale of packaged liquor in Kununurra by the Director of Liquor Licensing, the applicant submitted that it is committed to trading in accordance with those restrictions, however it was the applicant's view that problem drinkers would not be attracted to its proposed liquor store because it will not offer cheap, discounted liquor. The applicant has also prepared a harm minimisation plan.
- 9 In terms of existing alcohol-related harm in the locality, the applicant submitted that the number of reported alcohol-related offences per 1,000 of population in 2011 in Kununurra was favourable when compared to other towns in the Kimberley. The rate of offending in Kununurra was 50.1, Derby 58.9, Halls Creek 88.7, Broome 93.3, Wyndham 115.6 and Fitzroy Crossing 215.9. The applicant concluded that the locality surrounding the proposed liquor store has a relatively lower incidence of alcohol-related crime compared to what appears to be generally accepted in other areas of the Kimberley region.
- 10 In further support of the application, the applicant lodged 113 witness questionnaires and, according to the applicant, all the respondents were supportive of the application. Although some respondents raised concerns about the impact of the application, they nonetheless indicated that they would use the proposed store.
- 11 The applicant was of the view that the closure of the Liquorland store in Kununurra in August 2014 meant the town had one less packaged liquor outlet, which also deprived the town of its only browse style liquor store, as the two remaining outlets are drive through facilities.

- 12 In conclusion, the applicant submitted that the grant of the application was in the public interest because:
- the requirement of consumers in terms of choice, diversity and convenience in regard to package liquor services are not currently being met in the locality, and will be met by the proposed liquor store;
 - the population in the locality is growing fast and therefore has an increasing need of retail services in general and packaged liquor services specifically;
 - currently locals only have the option of drive through bottleshops to purchase packaged liquor or to purchase online and wait for delivery;
 - the proposed intended manner of trade is geared to attracting a clientele that is focused on quality and value. The proposed liquor store will not be attractive to those seeking quick cheap liquor; and
 - the proposed liquor store offers a different concept than the existing packaged liquor outlets including a browse style layout, higher quality products, wine tasting and appreciation, gourmet regional products and excellent customer service, it will be catering to the diverse requirements of the public for packaged liquor services and it can be seen as the proper development of the industry, as it is very responsibly and carefully designed and will be owned and managed by an experienced and capable licensee.

The objectors' evidence and submissions

The Commissioner of Police

- 13 Pursuant to s 73(1) of the Act the Commissioner objected to the application on the following grounds:
- 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.
- 14 It was submitted that WA police have extensive knowledge regarding contemporary issues relating to the locality surrounding the proposed liquor store. These issues include public drunkenness, vagrancy, domestic and non-domestic assault and public nuisance. The Commissioner acknowledged that the town of Kununurra is a regional hub for the East Kimberley area and the gateway to the Northern Territory, and as a result, it was submitted that the locality experiences a high number of transient inhabitants who utilise the community services in the town or are passing through on their way to other localities.
- 15 Although the population of the Kimberley district may be increasing, as contended by the applicant, it was submitted by the Commissioner that the expansion of the district

does not necessarily justify the grant of the application, particularly in light of the current issues in the locality.

- 16 According to the Commissioner, Aboriginal people represent 25.8% of the population of Kununurra, compared to the State average of 3.1%. It is clear that the locality is highly represented by the Aboriginal population. Further, this figure does not represent the transient nature of Aboriginal people, who may frequent the locality from time to time, but do not permanently reside there. Aboriginal people are at-risk of alcohol-related harm and as such, the impact of a licensed premises needs to be carefully scrutinised to ensure this demographic of people are not negatively and unduly impacted.
- 17 In addition, there is a higher presence of children and young people in the locality compared to the State average. This at-risk group is susceptible to the risk of harm from others who have consumed alcohol.
- 18 Data extracted from the Police Incident Management System (IMS) indicates that between January 2013 and December 2013 there were 744 recorded incidents in Kununurra, of which 323 were alcohol-related, whilst in the 12 months ending December 2014, there were 675 recorded incidents with 328 being alcohol-related. Specifically, in 2013 there were 239 domestic assaults, with 207 involving alcohol and in 2014 there were 227 domestic assaults of which 181 involved alcohol. The Commissioner pointed out that approximately 60% of all recent sexual assault offences reported are alcohol-related and the rate of domestic assault offences involving the presence of alcohol is more than four times that of non-alcohol related offences of the same type.
- 19 It was submitted by the Commissioner that an analysis of the crime data indicates that the town of Kununurra experiences a high level of alcohol-related harm, which is both serious and unacceptable, particularly in relation to domestic and non-domestic assault offences.
- 20 The Commissioner referenced research data which shows a relationship between outlet density and rates of domestic violence. Packaged liquor sales were also correlated with an increased likelihood of violence.
- 21 Consequently, it was submitted by the Commissioner that there is a very high and serious level of alcohol-related harm in the locality, and even a small risk of increase in this existing level of harm is unacceptable. According to the Commissioner, the grant of the application will increase the availability of alcohol in the locality and this will result in an increase in alcohol-related harm in the locality beyond that which it currently experiences.
- 22 The Commissioner submitted letters from the following persons:
 - Ms Mary Crowley, CEO of the Aboriginal Family Law Services (AFLS). AFLS provides assistance to at-risk people in the locality, which includes Aboriginal

people and children and young people. Ms Crowley provided an insight into the work of AFLS within the local community and the problems presently experienced by the existing at-risk groups due to the abuse of alcohol;

- Mr James Back, Executive Officer for Reconciliation Western Australia. Reconciliation WA does not support the application because of the existing problems of alcohol abuse in the region, which manifests itself in domestic violence, lateral violence and social unrest; and
- Ms Rachell Fewster, operator of Subway Kununurra. According to Ms Fewster Subway customers include many at-risk persons, and having a liquor store in such close proximity may pose a safety risk to younger staff members of Subway.

23 The Commissioner also provided a statement from the Officer in Charge (OIC) of the Kununurra Police Station who stated that following the closure of Liquorland Kununurra there was a dramatic reduction in the demand for policing services and the shopping centre immediately experienced reduced incidents of anti-social behaviour. According to the OIC, Kununurra, like most Kimberley towns, experience high incidents of alcohol fuelled violence which has an extreme negative effect on communities. This negative effect has a flow-on impact for dysfunctional families, poor school attendance, juvenile offending and finally a loss of cultural awareness and belonging. It was also raised by the OIC that the proposed liquor store will be located in the middle of Kununurra near important local infrastructure which has a high flow of local traffic. This location would potentially place intoxicated persons at high risk of severe injury due to traffic flow, as well as a return to high levels of anti-social behaviour in the CBD.

24 Consequently, it was submitted by the Commissioner that whilst the closure of the Liquorland store resulted in a reduction in amenities for the locality, the town continues to suffer from anti-social behaviour and crime as a result of the alcohol abuse. The grant of the application will increase the level of anti-social behaviours as observed in the past.

Australian Broadcasting Corporation

25 It was submitted by the ABC that undue offence, annoyance, disturbance or inconvenience to its staff that work at the ABC's studio/office at 114B Coolibah Drive would be likely to occur if the application is granted. The proposed liquor store will be located next door to the ABC studios.

26 It was submitted that there are already problems in the area with inebriated people gathering in the car park area behind the row of premises from 106-116 Coolibah Drive and inebriated people hanging around outside the ABC studio.

27 According to the objector, if the application is granted, these occurrences would only increase, thereby negatively impacting on staff.

Dr Rob Phair

- 28 Dr Phair has worked at the Kununurra Hospital for the past five years and has witnessed firsthand in the Emergency Department and on the ward, the destructive effects of alcohol abuse on the most vulnerable members of the community. According to Dr Phair, there is a very significant, on-going issue in the local community with alcohol abuse. This problem also extends to remote communities nearby, in particular Warmun, where he also works.
- 29 According to Dr Phair, the closure of the Liquorland store had a beneficial effect on the safety and amenity of the main town shopping centre.
- 30 In these circumstances, it was submitted that the grant of a new liquor store licence in the town would only have an adverse effect on the local community.

Kimberley Accommodation (East) Pty Ltd (licensee of Hotel Kununurra)

- 31 It was submitted that Kununurra currently experiences high rates of offences against the person and alcohol-related crime, harm and ill-health and duplicating and increasing the density of alcohol outlets may result in an unacceptable increase in the levels of violence currently experienced in the locality. In this regard, the licensee objector provided a range of data to support this contention.
- 32 According to the licensee objector, Kununurra has a long history of alcohol-related harm or ill-health being experienced by members of the community, and as a result of that harm or ill-health, restrictions were imposed to limit the availability of alcohol within the community. Although restrictions were first imposed in 2011, the problems experienced by this community with respect to alcohol abuse have existed for a much greater period. As early as 2001, the Supreme Court varied a decision of the Liquor Licensing Court so that a proposed hotel licence in Kununurra could not sell packaged liquor to members of the general public due to concerns about alcohol-related harm in the community.
- 33 The licensee objector also questioned the probative value of the applicants witness questionnaires and submitted that the questionnaire is fundamentally flawed because of the way the questions were framed.
- 34 It was submitted that the onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest and in respect of this application, the applicant has attempted to downplay the existing level of alcohol-related harm in Kununurra. Although the applicant will have in place harm minimisation strategies, in reality, it was submitted that the applicant will have no control over the manner in which liquor purchased from the store will be consumed by members of the public, including at-risk groups.

- 35 In conclusion, it was submitted by the licensee objector that while the applicant may argue that the grant of the present application will simply, in light of the closure of Liquorland Kununurra, maintain the status quo (there would still be three packaged liquor outlets in Kununurra), given the present levels of alcohol-related harm, it is not in the public interest for the status quo to be maintained. Minimising the risk of increasing the existing level of harm in the community should outweigh any benefits to the community by the grant of the application.

The intervener's evidence and submissions

- 36 The EDPH intervened in the application to make representations regarding harm or ill-health issues that arise in respect of the application. The intervention was premised on the following:
- 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 Kununurra;
 - there are at-risk groups in the locality who currently experience alcohol-related harm, both directly and indirectly;
 - local stakeholders advise that alcohol is a key contributor to harm and problems experienced in Kununurra;
 - Kununurra is subject to current liquor restrictions as a result of concern regarding alcohol-related harm in the area;
 - Kununurra experiences alcohol-related harm, which is above the State rate, including –
 - alcohol-related domestic assaults; and
 - alcohol-related hospitalisations.
 - clients attending treatment services in Kununurra predominantly report alcohol as the primary drug of concern.
- 37 It was submitted by the EDPH that the grant of the application will reintroduce a third packaged liquor retailer into a locality that already experiences negative health and social impacts related to the consumption of alcohol. The EDPH provided a range of data relating to the existing level of alcohol-related harm in Kununurra, including:
- total hospitalisation rate for 'all alcohol-related conditions' for residents of Kununurra was significantly higher (4.31 times) than the corresponding State rate;
 - over one in three patients attending Kununurra Hospital Emergency Department for alcohol/drug toxic effect were assessed by triage staff as requiring urgent treatment;

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- almost four in five domestic assault offences in Kununurra were recorded as alcohol-related which is higher than both the State and Kimberley District, and this rate has increased since 2010;
 - over two thirds of verified non-domestic assault offences in Kununurra were recorded as alcohol-related;
 - over 85% of reported drink-driving offences in Kununurra in 2014 involved packaged liquor consumption; and
 - alcohol as a primary drug of concern, accounts for at least three quarters of all treatment episodes for Kununurra clients.
- 38 It was noted by the EDPH that Liquorland Kununurra closed in August 2014 and a comparison of alcohol-related domestic assault offences recorded since the closure of this store indicates that the offence rate per 1,000 persons is lower after the closure of this store than before.
- 39 According to the EDPH, in addition to Aboriginal people who reside within Kununurra locality, there are also a number of Aboriginal communities located in close proximity to Kununurra and during the wet season members of outlying communities come to Kununurra. While in Australia, there are fewer drinkers in the Aboriginal population compared to the non-Aboriginal population, and while Aboriginal people also drink less frequently, a greater percentage of Aboriginal people who do drink, consume alcohol at levels that pose both a short-term and long-term risks for their health. Harmful use of alcohol can be seen as a result of the disadvantage experienced by many Aboriginal people. Some Aboriginal people find themselves trapped within a cycle of poverty and poor health, disconnected from country and marginalised within society. These issues have impacted on the physical, mental, social, emotional and spiritual wellbeing of Aboriginal people.
- 40 The EDPH provided a statement from the Coordinator of the Kimberley Community Alcohol and Drug Service (KCADS) based in Kununurra. KCADS provide assessment, counselling, referrals and support to people who are experiencing problems relating to alcohol and other drugs. According to the Coordinator, alcohol abuse impacts on clients, families and the community in a number of ways, including;
- violence in the home and on the streets;
 - anti-social behaviour;
 - drinking in public places;
 - young, unsupervised children wandering the streets at night;
 - relationship and family breakdowns within the home and extended family;
 - alcohol dependence; and

- crime.
- 41 From the Coordinator's experience, many referrals to the KCADS have occurred in relation to people's consumption of packaged liquor, with regular drinkers making up the greatest proportion of clients experiencing alcohol-related issues.
- 42 It was submitted by the EDPH that the Kununurra Hospital will have approximately 13,300 clients present to the Emergency Department in 2014/15. According to the hospital's Director of Nursing, who provided a statement to the EDPH, alcohol has an enormous impact on the town resulting in presentations to the Emergency Department for domestic violence, head injuries, physical assaults and sexual abuse. Long term alcohol abuse also results in presentations for malnutrition, diabetes, renal failure and other chronic disease.
- 43 According to the EDPH, research literature establishes a correlation between the availability of alcohol and the frequency and range of social and health problems. Also, the socio-economic circumstances of communities can influence drinking behaviour and drinking behaviours can in turn, influence socio-economic circumstances – it can best be described as a cycle where both factors influence and impact on each other.
- 44 It was therefore submitted by the EDPH that this application presents harm and ill-health concerns based on a combination of risk factors including, the central location of the proposed premises, at-risk groups for alcohol-related harm living in Kununurra, and alcohol-related harm currently occurring in the locality.

Determination

- 45 The law relating to the grant of a liquor store licence is well established. A brief summary of the relevant legal provisions are:
- the Act imposes an onus on an applicant for the grant of a licence to satisfy the licensing authority that the grant of the application is in the public interest (s 38(2)), and the burden of persuasion imposed on the applicant must be satisfied by evidence adduced in any particular case;
 - an intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321) while the burden of establishing the validity of any objection lies on the objector (s 73(10));
 - 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).

- the factual matters which the licensing authority is bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5;
- 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; and
- the licensing authority must deal with each application on its merits (s 33) but has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).

46 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.

47 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.

48 The applicant seeks to establish a 174m² browse style liquor store in the town of Kununurra. The proposed liquor store will be located within a commercial precinct in the centre of town and provide a selection of fine wines, premium beers, spirits and ancillary services and products. There are two existing packaged liquor outlets in town: Gulliver's Tavern and the Kununurra Hotel. A third outlet, Liquorland Kununurra, which operated under a liquor store licence, ceased trading in August 2014.

49 One of the objects of the Act is to cater to the requirements of consumers for liquor and related services. In this regard, the applicant submitted that the only liquor store in town closed in 2014 thereby depriving the local community of a browse facility and an alternative to the hotels, which primarily operate a drive-through packaged liquor

component. The applicant also proposes to offer a selection of premium liquor products and ancillary services such as a wine club and wine tastings. The applicant submitted over 100 witness questionnaires, from members of the public, expressing their subjective views that the proposed services to be offered would be of benefit to them.

- 50 Although the applicant referred to the witness questionnaires as objective evidence of consumer requirements, in truth it is nothing more than the subjective belief of the person completing the questionnaire. It is a matter for the licensing authority to determine whether that subjective belief is objectively reasonable. The Liquor Commission in a number of previous decisions has expressed reservations about the weight that may be applied to surveys. This has been because, among other reasons, the outcome of surveys is dependent upon the method of selection and sampling of respondents, the objectivity of the surveys and petitions, the type of questions asked, and the geographical and demographic composition and nature of the locality.
- 51 Nonetheless, in consideration of this evidence, and the applicant's proposed manner of trade, I find that the grant of the application would be catering to the requirements of consumers for liquor and related services, consistent with object 5(1)(c) of the Act. However, the application must also be considered in the context of the other objects of the Act, one of which is to minimise alcohol-related harm in the community.
- 52 The application attracted a number of objections and an intervention from the EDPH. The common ground of the objections and intervention is that Kununurra currently experiences high rates of alcohol-related harm and anti-social behaviour and the grant of the application is likely to increase the existing level of harm in the community. A variety of evidence was submitted to support this contention, some of it objective whilst other evidence was submitted from people providing services to the community, in particular services to at-risk persons who experience problems with alcohol abuse.
- 53 Some key data reflecting the existing level of alcohol-related harm in Kununurra is:
- total hospitalisation rate for 'all alcohol-related conditions' for residents of Kununurra was significantly higher (4.31 times) than the corresponding State rate;
 - over one in three patients attending Kununurra Hospital Emergency Department for alcohol/drug toxic effect were assessed by triage staff as requiring urgent treatment;
 - almost four in five domestic assault offences in Kununurra were recorded as alcohol-related which is higher than both the State and Kimberley District, and this rate has increased since 2010;
 - over two thirds of verified non-domestic assault offences in Kununurra were recorded as alcohol-related;

- over 85% of reported drink-driving offences in Kununurra in 2014 involved packaged liquor consumption;
 - alcohol as a primary drug of concern, accounts for at least three quarters of all treatment episodes for Kununurra clients;
 - between January 2013 and December 2013 there were 744 recorded incidents in Kununurra, of which 323 were alcohol-related, whilst in the 12 months ending December 2014, there were 675 recorded incidents with 328 being alcohol-related;
 - in 2013 there were 239 domestic assaults, with 207 involving alcohol and in 2014 there were 227 domestic assaults of which 181 involved alcohol; and
 - approximately 60% of all recent sexual assault offences reported are alcohol-related and the rate of domestic assault offences involving the presence of alcohol is more than four times that of non-alcohol related offences of the same type.
- 54 The applicant compared alcohol-related crime in Kununurra to other towns in the Kimberley and concluded that the locality surrounding the proposed liquor store has a relatively lower incidence of alcohol-related crime compared to what appears to be generally accepted in other areas of the Kimberley region and therefore this reflects favourably on the rates of crime in Kununurra and supports the grant of the application. In my view, this assertion completely ignores the reality and extent of the problems associated with alcohol abuse in Kununurra and the wider Kimberley area, where considerable resources are deployed to reduce crime and dysfunction in this region.
- 55 The applicant also submitted that the locality has some positive socio-economic indicators; however, the Australian Bureau of Statistics Socio-Economic Indexes for Areas (SEIFA) indicates Kununurra is a relatively disadvantaged suburb. This is corroborated by the existing harm data.
- 56 Further, the applicant submitted that its proposed liquor store will replace the Liquorland store in terms of providing a browse facility and the proposal is for an upmarket store that targets the middle class. The applicant was therefore of the view that the grant of the licence would not contribute to alcohol-related harm in the locality in any measureable way.
- 57 Although the applicant claims that its target market is the middle class and it has a harm minimisation plan, main stream liquor products will be available at the liquor store, as evidenced by the applicant's proposed 'Draft Product Range'.
- 58 Harm associated with packaged liquor occurs away from the premises. In LC 24/2012 the Liquor Commission found that [at 32]:

“Although effective management of packaged liquor outlets may be a component of addressing the health issues in relation to alcohol, it has

however limited application to such components as outlet density, secondary supply, and harm that occurs in the home or place of consumption.”

59 I also note that restrictions on the sale of packaged liquor in Kununurra were imposed by the Director of Liquor Licensing in February 2011 as a result of concerns about the extent of alcohol-related harm in the community. Whilst those restrictions have been modified, nonetheless, restrictions remain in place. As far back as 2001, the extent of alcohol-related problems in Kununurra were acknowledged by the Supreme Court (refer *Executive Director of Public Health v Lily Creek International & Ors [2001] WASCA 410*)

59 The evidence indicates that since the closure of Liquorland Kununurra there has been a decline in alcohol-related anti-social behaviour and crime in the town. This establishes a clear nexus between the sale and supply of packaged liquor and the resultant harms in this community.

60 Clearly, in my view, the evidence creates a tension between the harm minimisation object of the Act (5(1)(b)) and object 5(1)(c), which is catering to the requirements of consumers. In such circumstances, I am required to weigh and balance those competing interests (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258*).

61 In deciding whether the grant of the application is in the public interest, I am also guided by the observation of Tamberlin J In *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142* where he 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.”

62 Further guidance can also be obtained from Wheeler J in *Lily Creek supra*, where she said:

“The Act directs attention to the minimisation of alcohol related harm generally (s 5(1)(b)). The relevant question for the Court, in that case, is

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

- 63 In my view, Kununurra already experiences high-rates of alcohol-related harm. This is evidenced by alcohol-related data pertaining to emergency department presentations, hospitalisations, domestic and non-domestic assaults, drink-driving data and alcohol treatment episodes. The evidence of the Coordinator of the East Kimberley Community Alcohol and Drug Service, the Director of Nursing at the Emergency Department of the Kununurra Hospital, Dr Phair and Ms Crowley also support this conclusion.
- 64 The level of harm, due to the use of liquor, which is likely to result if the application is granted, is a relevant consideration to the determination of the application. This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it must be assessed against any existing harm or ill-health so as to assess the overall level which is likely to result. Whether such harm or ill-health will arise requires an element of prediction (refer *Malec v JC Hutton* (1990) 169 CLR683).
- 65 It was submitted by the EDPH that national and international research establishes a positive correlation between alcohol availability and harm in the community.
- 66 Edelman J in (*Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC51 said:

"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."

- 67 In consideration of the evidence as a whole, I find, on the balance of probability, that the grant of this application has the potential to increase the already high level of alcohol-related harm that presently exists in the locality and it is likely to negatively impact on at-risk persons who reside in the locality or resort to the locality from time to time. In my view, the best interests of the local community would not be served by a further packaged liquor outlet.
- 68 The onus falls upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest. The applicant's evidence and submissions fall well short of discharging this obligation, particularly in view of the extensive evidence highlighting the existing alcohol-related problems in the local community.
- 69 Therefore, in the exercise of my discretion under the Act, I conclude that greater weight should be given to the wellbeing of the local community and the harm minimisation object of the Act over the benefits some members of the community may experience through the introduction of a browse style packaged liquor facility. The evidence overwhelmingly establishes that the abuse of alcohol is having a significant negative impact on the residents of, and visitors to, Kununurra. Although the closure of Liquorland Kununurra may have reduced the amenities in the town, it nonetheless had a positive benefit in terms of reducing alcohol-related domestic assaults and anti-social behaviour.
- 70 I find that the grant of the application is not the public interest and the application is refused.
- 71 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.
- 72 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