

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: LIQUORLAND (AUSTRALIA) PTY LTD

OTHER PARTY: COMMISSIONER OF POLICE

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

APPLICATION REF: A000251329

PREMISES: LIQUORLAND RAINE SQUARE
300 MURRAY STREET, PERTH

DECISION OF: BRETT SNELL
DEPUTY DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 31 MAY 2018

1. On 29 November 2017, an application was made to the Director of Liquor Licensing (the Director) by Liquorland (Australia) Pty Ltd (the Applicant) for the conditional grant of a liquor store licence for premises to be known as *Liquorland Raine Square* and situated at 300 Murray Street, Perth.
2. The application, which was made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act), was advertised for comment in accordance with instructions issued by the Director, which lead to the lodgement of a notice of intervention by the Commissioner of Police (the Intervenor).
3. On 22 February 2018, the parties were advised that:
 - (a) pursuant to ss 13 and 16 of the Act, a document exchange would take place so that each party would be given a reasonable opportunity to present its case; and
 - (b) the application would then be determined on their written submissions.
4. As this is an administrative decision, rather than referring in detail to the entirety of the evidence before me, I will set out what I consider to be the relevant material facts. I will also outline the process of my reasoning from consideration of those material facts to conclusion, setting out the differing positions advanced by the parties. Where there is a conflict in submissions that is significant to the outcome, I will provide reasons why I have preferred one position over another.

Submissions of the parties

The Applicant

5. In the Public Interest Assessment (PIA) lodged in support of the application, the Applicant submitted that it is seeking the conditional grant of a liquor store licence at premises as part of the \$75 million redevelopment of Raine Square, located in the Perth central business district and bounded by Murray, William and Wellington Streets. According to the PIA, the upgraded Raine Square retail complex (the Centre), which will include the

construction of a new hotel tower, upgrading of the existing retail plaza, construction of Perth CBD's only cinema and significant heritage conservation works to the heritage listed buildings on the subject land.

6. As the highest order activity centre in the Perth Metropolitan Region and as the capital city of Western Australia, the Applicant submitted that the locality is the centre of business, administration, commerce, retail, tourist, civic, cultural and entertainment activities for the State, with retail functions including department stores, discount department stores, supermarkets and a full range of specialty shops.
7. The locality is undergoing significant growth, with a 23% increase in population between 2011 and 2016, and a further 45.97% growth in population estimated in the Perth CBD between 2017 and 2036. With such considerable population growth and change to be experienced in the future, there will be a significant need for additional community facilities and services.
8. The proposed store will be located inside the Centre, co-located next to the existing Coles supermarket, enabling the purchase of packaged liquor with groceries and providing convenience to residents, tourists, and workers commuting to and from the Perth CBD by public transport, given that the redevelopment will also include pedestrian links through the Centre to the Perth Underground Railway Station and Busport.
9. Accordingly, the Applicant submitted that the following public benefits will be associated with the grant of its application:
 - (a) the ability for consumers to combine liquor purchases with daily or weekly grocery shopping, which will meet the contemporary expectations of the Perth CBD residents, worker and visitor community;
 - (b) the premises will have minimal impact on the amenity of the area, due to its location within the Centre and will have adequate security measures;
 - (c) the store will cater for the significant population growth anticipated in the locality over the next 20 years and enable residents to shop locally, particularly those consumers who do not own private vehicles;
 - (d) the store will also provide consumers in the locality the opportunity to purchase liquor in a safe and responsible environment; and
 - (e) an additional liquor store in the locality will provide choice and convenience for city workers who commute on public transport, as well as meeting the contemporary expectations of visitors to the many hotels and serviced apartments in the locality for packaged liquor services.
10. The proposed liquor store will be a browse only store, with a small footprint consisting of:
 - (a) a selling area of 127m²;
 - (b) cool room area of 36m²; and
 - (c) stock area of 20m²,for a total licensed area of 183m².

11. The PIA also included:
 - (a) a town planning report prepared by MGA Town Planners (the MGA report);
 - (b) a survey of consumers undertaken by Data Analysis Australia (the DAA report); and
 - (c) a social impact and amenity report prepared by Bodhi Alliance (the Bodhi report),which all concluded that it is extremely unlikely that the operation of the store will have an adverse impact on the health or well-being of the locality.
12. Further, while there are a number of liquor outlets in the locality, both Bodhi and MGA reported that the provision of packaged liquor outlets in the Perth city area is quite limited relative to the size and scale of the locality, number of employees, tourists, residents and businesses. These conclusions were also informed by responses to surveys conducted by DAA, with respondents noting the difficulty in finding packaged liquor outlets in the area and commenting on the limited choice in the city.
13. It was also submitted that *Liquorland* stores emphasise single item value, rather than bulk purchasing or bundle buys, which provides the opportunity for consumers to obtain value in the one or two liquor products that might accompany grocery or other shopping.
14. Additionally, the Applicant asserted that the proposed premises will have comprehensive security measures in place to minimise and deter crime and anti-social behaviour, which will have a beneficial impact on the security and safety of patrons using the Centre, who will be able to purchase liquor in a safe and responsible environment.
15. Further, the Applicant submitted that the store has been designed to optimise safety and security, with a single-entry point from the Centre mall, which will provide staff with an unobstructed view from the store into the mall and supervision of all customers entering and exiting. Additionally, the clear line of sight into the store will also enable passive surveillance from outside the store by passers-by and nearby businesses.
16. Other security measures proposed included:
 - (a) all spirits being located behind locked glass;
 - (b) bright lighting throughout the store;
 - (c) an alarm system, which will be monitored off-site; and
 - (d) CCTV cameras covering the store, in compliance with the Director's policy.
17. The Applicant further submitted that the placing of spirits behind locked glass, in conjunction with other standard Coles Liquor security measures, is a proven method of reducing theft, with analysis of *Liquorland* stores revealing that following spirits being placed behind locked glass, theft in the store reduces dramatically to negligible levels.
18. Information on the surrounding locality, including demographics and outlet density was also provided in the Applicant's PIA; which generally addressed those matters prescribed in ss 5 and 38(4) of the Act, with the Applicant noting that the suburbs comprising the locality are socio-economically advantaged and there are no significant concentrations of

groups who could potentially be considered 'at risk' of alcohol-related harm residing in the locality.

19. The Bodhi Report included an audit of the sensitive premises located within the locality and the author undertook community engagement with the key stakeholders, before concluding, notwithstanding the presence of some 'at risk' groups visiting the locality, that the operation of the proposed premises would unacceptably contribute to an increase in existing levels of alcohol-related harm in the locality.
20. The DAA Report also inferred, given there are no significant concentrations of groups who reside in the locality potentially at risk of alcohol-related harm, that the likely customers of the store will be those who do not presently suffer from much, if any, alcohol-related harm.
21. Accordingly, the Applicant submitted that its experts concluded it is unlikely the application would unacceptably contribute to any increase in alcohol-related harm in the locality.
22. Further, to minimise any impact of the premises on the community, the Applicant submitted that it has developed effective security measures, community programs and harm minimisation policies.

The Intervenor

23. The Intervenor intervened to make representations on public interest matters, particularly noting that the proposed premises is to be located in an area that the Director has previously found to suffer from a high level of alcohol-related harm.¹
24. The Intervenor also noted that the Applicant's independent research reiterates the concerns expressed by the Director, given that the DAA Report, the Bodhi Report and the MGA Report all highlight alcohol-related harm in the locality.
25. Further, the Intervenor also observed that a number of local service providers were positioned in the locality, offering services to vulnerable people affected by alcohol and dealing with the effects of alcohol abuse and addiction.
26. While noting the Applicant's acknowledgement of the presence of at-risk groups in the locality, the Intervenor submitted that "the Applicant appears to be dismissive of the impact of the proposed store by placing reliance on a '...range of existing services and programs available...to assist those within the community who are at risk or need". The Intervenor also noted that the author of the Bodhi Report had observed during site visits, that a small number of people who appeared to be homeless and or alcohol dependent, were waiting outside the BWS store for it to open.
27. The Intervenor also expressed the concerns over the reliability of the some of the observations in the Bodhi Report, particularly:

¹ Re: *VTY Perth Pty Ltd* [Application Ref: A000223363]; Re: *TDMAC Pty Ltd* [Application Ref: A000205322]; and Re: *Nu Wines Pty Ltd* [Application Ref: A000238281]

- (a) regarding the identified stakeholders, where it was noted that only half of them had been contacted, which meant that potentially 25 identified stakeholders referred to in the Bodhi Report had not been contacted by the author, despite claims to the contrary; and
 - (b) Bodhi conducted stakeholder interviews using the Western Australia Drug and Alcohol Mapping Tool, which is not endorsed by the WA Drug and Alcohol Office for liquor licensing applications and fails to discuss the specific liquor store proposal or ask any specific questions relating to the proposed store.
28. Further, despite requesting evidence regarding the stakeholder interviews from the writer of the Bodhi Report, no evidence had been provided to the Intervenor on:
- (a) comments attributed to police officers;
 - (b) risk behaviours for juveniles occurring later in the evening and being confined mainly to Northbridge;
 - (c) most stakeholders feeling there was no need for an additional liquor store in the city, but that the store would not adversely impact the community...those with alcohol related problems would access it from other stores as they currently do; and
 - (d) there being no opposition to the store, but limited support from the stakeholders' feedback.
29. Therefore, the Intervenor submitted that in the absence of evidence relating to stakeholder consultation for the Bodhi Report, it can only be inferred that the author did not contact all of the stakeholders or did not properly record evidence of that consultation and that the non-disclosure not only casts doubt on the entire evidence relating to consultation with stakeholders, but also casts doubt on whether the Applicant had properly considered the impact of the proposed store on at-risk groups.
30. Additional information presented by the Intervenor, which was sourced from police databases, provided an analysis of crime data for the City of Perth between January 2014 and December 2016, with the relevant information broken down into alcohol and non-alcohol related crimes (where the letter 'Y' indicated the presence of alcohol in the crime and the letter 'N' indicated that alcohol was not a contributing factor in the offence).

Table 1

IMS	2014		2015		2016		Total
	N	Y	N	Y	N	Y	
Perth							
Domestic Assault	45	35	100	59	90	66	395
Non-Domestic Assault	378	176	480	180	440	180	1834
Threatening Behaviour	129	40	146	49	174	42	580
Total	552	251	726	288	704	288	2809

31. Representations were made that Table 1 depicts an upward trend in domestic assaults from 2014-2016. Similarly, offences of non-domestic assault and threatening behaviour also increased during this period.

32. According to the Intervenor, Tables 2, 3 and 4 demonstrate the totals in rates per one thousand over the same three-year period and demonstrate that the total rates of crime data in the Perth locality are considerably higher than the metropolitan and state totals (which were provided for comparative rates):

Table 2

RP 1000	2014		2015		2016		Total
Perth	N	Y	N	Y	N	Y	
Domestic Assault	3.92	3.05	8.46	4.99	7.62	5.58	33.62
Non-Domestic Assault	32.92	15.33	40.62	15.23	37.23	15.23	156.55
Threatening Behaviour	11.23	3.48	12.35	4.15	14.72	3.55	49.49
Total	48.07	21.86	61.43	24.37	59.57	24.37	239.66

Table 3

RP 1000	2014		2015		2016		Total
Metro	N	Y	N	Y	N	Y	
Domestic Assault	3.39	1.44	4.76	1.56	5.27	1.51	17.94
Non-Domestic Assault	2.82	0.96	3.26	0.95	3.43	0.90	12.32
Threatening Behaviour	1.46	0.32	1.89	0.35	2.37	0.35	6.74
Total	7.67	2.72	9.92	2.86	11.07	2.76	36.99

Table 4

RP 1000	2014		2015		2016		Total
State	N	Y	N	Y	N	Y	
Domestic Assault	3.60	2.33	4.88	2.44	5.68	2.55	21.49
Non-Domestic Assault	2.99	1.31	3.37	1.20	3.53	1.16	13.57
Threatening Behaviour	1.59	0.48	1.95	0.52	2.46	0.56	7.56
Total	8.19	4.12	10.20	4.16	11.68	4.27	42.61

33. While noting the security measures proposed by the Applicant, the Intervenor submitted that additional security may assist in the additional reduction of theft and recommended that licensed security staff be employed at the premises.
34. In conclusion, the Intervenor submitted *inter alia* that:
- given the number of stakeholders providing services to vulnerable people in the locality, which often involve the abuse and misuse of liquor, the likely level of harm to result from the grant of the application will not be insignificant;
 - the Applicant's assertion that the proposed store will not impact the locality cannot be relied upon, because the Applicant's evidence cannot be tested; and
 - there is clear evidence of adequate and suitable liquor stores that cater for consumers within the locality.

Further submissions

Applicant's Responsive and closing submissions

35. In its responsive submissions, the Applicant volunteered to implement the following additional security measures at the premises which, it submitted, will assist to deter theft:

- (a) electric sliding doors at the main entrance to the store;
 - (b) locked cages in the cool room storing RTD multi-packs and cartons; and
 - (c) two team members will be on duty at the store at all times, which will likely increase in peak periods.
36. Accordingly, the Applicant contended that licensed security staff would not be necessary or be effective in deterring theft at the premises for the following reasons:
- (a) the Applicant's proposed security measures will deter theft, which include:
 - (i) a single controlled entry point from the Centre mall;
 - (ii) store layout designed to provide for an unobstructed view from the store into the mall, and supervision of all customers entering and exiting the store. This clear line of sight will also enable passive surveillance from outside the store by passers-by and nearby businesses;
 - (iii) all spirits to be located behind locked glass;
 - (iv) bright lighting throughout the store;
 - (v) an alarm system which is monitored off-site; and
 - (vi) CCTV cameras covering the store, in compliance with the Director's policy;
 - (b) the Applicant's experience and data suggests that security guards are not necessarily an effective theft deterrent over and above the measures proposed, and agreed to, by the Applicant;
 - (c) the premises will be centrally located within the Centre, with a single entrance from the central mall of the Centre, with no external entrance;
 - (d) the additional team member on duty during peak trading times will perform the role of "greeter", which the Applicant submitted, effectively mitigates the risk of theft by acting as a "warning" to potential thieves; and
 - (e) Centre management has confirmed dedicated security guards will be employed at the Centre when it reopens ².
37. The Applicant also submitted that the proposed security measures at the premises negate the need for a security guard and particularly that electronic glass sliding doors have, in the Applicant's experience, proven to be an excellent theft deterrent as they reduce the capacity for "snatch and run" style theft. In such circumstances, it was submitted there is little need for a security guard.
38. The Applicant referenced a recent decision of the Liquor Commission *Re: Tokyo Mart* ³, in which it was accepted that keeping spirits in lockable glass cabinets accessible only by authorised staff would "significantly ameliorate the risk" of theft, on its own, with the Applicant adding that the use of a RTD "cage" adds to this amelioration.

² Prior to the redevelopment, a minimum of two security guards were employed on patrol at the Centre at all times, with this increasing to three or four in busy periods. While specific security arrangements for the redeveloped Centre have not yet been confirmed, Centre management has confirmed that the security presence will not decrease following reopening.

³ [LC 38/2017]

39. The Applicant also submitted a:

- (a) supplementary report prepared by DAA (DAA Supplementary Report);
- (b) supplementary report prepared by Bodhi (Bodhi Supplementary Report); and
- (c) a copy of a letter dated 2 February 2018, from Herbert Smith Freehills to the WA Police Liquor Enforcement Unit in response to email queries on the Bodhi Report.

40. Further, in response to the notice of intervention, the Applicant submitted that the Intervenor had failed to address the fundamental question of how the proposed premises would result in an unacceptable increase in alcohol-related harm.

41. In relation to the request by the Intervenor for details of the stakeholder engagement, including the names of the individuals interviewed by Bodhi as part of this process, the Applicant submitted that the provision of such information would be inappropriate, with the Applicant asserting that specific details of the stakeholder engagement are not disclosed by Bodhi, particularly the names of individuals interviewed, because the anonymity of the interviewees is essential for obtaining the objective and real views of the stakeholders, without fear of recrimination from their organisation or others.

42. Accordingly, the Applicant rejected the Intervenor's criticism of the Bodhi Report and noted that the concerns of the Intervenor had specifically been addressed in the letter dated 2 February 2018, from Herbert Smith Freehills to the WA Police Liquor Enforcement Unit.

43. While acknowledging that the rules of evidence do not apply to the application, the Applicant submitted that the Bodhi Report and Supplementary Bodhi Report are proper, objective expert evidence prepared in accordance with the same rigorous methodology that Bodhi uses in all its stakeholder engagement projects and the weight to be attributed to the evidence submitted by the Applicant is a matter for the Licensing Authority to assess in determining the Application. Notwithstanding this, the Applicant further submitted that the Bodhi reports are only part of the evidence relied upon by the Applicant and the MGA and DAA reports also provide evidence in relation to the assessment of the likely impacts associated with granting the application and the veracity of that evidence has not been questioned by the Intervenor.

44. While acknowledging that the locality experiences existing alcohol-related harm, the Applicant disputed that it is at such level where any increase, even small, would be unacceptable:

- (a) the evidence from available data indicates that there are low numbers of "at risk" groups residing in the locality and that the locality experiences a relatively high level of socio-economic advantage;
- (b) "at risk" groups visiting the locality represent only a very small number of people estimated to visit the locality daily, and there are a large number and range of existing services available in the locality to assist those at risk or in need;

- (c) crime data provided in the Intervention measures crime against estimated residential population, however the estimated residential population for the suburb of Perth is only 5,317, or 2 per cent of the 261,106 estimated daily population of the Perth CBD; and
 - (d) City of Perth Safe City Survey results indicate that only 5% of survey respondents feel unsafe in Perth during the day, with perceived safety at night being comparable to Australian averages.
45. Accordingly, the Applicant submitted that opening the premises would not result in an undue increase in alcohol-related harm.
46. In assessing the risk that granting the application may pose, the Applicant submitted that it is not the risk of harm in some abstract sense that is relevant, but rather an assessment of risk with regard to the proven circumstances of the application.
47. The Applicant further submitted that there is no evidence that granting the Application will unacceptably contribute to an increase in the existing rates of harm in the locality in the specific circumstances of the store's proposed manner of operation by an experienced and responsible licensee and the location of the store inside the Centre and in weighing the harm and other public interest considerations, the risk does not outweigh the benefits to the current and future residents of the locality, and the broader community, of granting the application.

Legislative and legal framework

48. Section 30A(1) of the Act provides that applications under the Act are determined by the licensing authority.
49. Further, there is no presumption in favour of the grant of the application, rather the opposite applies and the Applicant must adduce sufficient evidence to satisfy the licensing authority that the grant of the application is in the public interest⁴. In this regard, the Courts have found that applications under the Act cannot proceed on the expectation that the commercial interests of an application will coincide with the public interest. To this end, Tamberlin J observed⁵ that:

“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.”

50. In proceedings such as these, the Intervenor's carry no onus to establish their assertions of fact or opinion.⁶

⁴ *Liquor Control Act 1988*: s 38(2)

⁵ Refer *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142

⁶ Refer *Re Gull Liquor* (1999) 20 SR (WA) 321

51. In determining this application, I must therefore consider both the positive and negative social, economic and health impacts on the community in order to be satisfied that the grant of the liquor licence is in the public interest. This responsibility requires the exercise of a discretionary value judgment that is confined only by the scope and purpose of the Act.⁷
52. Accordingly, the factual matters that I am bound to take into account when undertaking such a value judgment are those relevant to the primary and secondary objects of the Act, as set out in s 5.⁸ The primary objects of the Act are:
- (a) to regulate the sale, supply and consumption of liquor;
 - (b) to minimise harm caused to people, or any group of people, due to the use of liquor; and
 - (c) 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.
53. The secondary objects of the Act are:
- (a) 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;
 - (b) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - (c) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
54. As stated by Banks-Smith J⁹, consideration of the matters under object 5(1)(c) does not diminish the role of the other objects of the Act, to which regard must be had.
55. Where conflict arises in promoting the objects of the Act, I must weigh and balance the competing interests in each case.¹⁰
56. I am 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.
57. Section 16 of the Act provides that the licensing authority is to act according to equity, good conscience and the substantial merits of the case; should act without undue formality and is not bound by the rules of evidence.
58. Finally, s 33(1) of the Act provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that it considers in the public interest.

⁷ 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

⁸ Refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227

⁹ Refer *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police & Ors* [2017] WASC 88

¹⁰ Refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258

Determination

59. The proposed store will be located inside the Centre, co-located next to a Coles supermarket, which the Applicant asserts will enable the purchase of packaged liquor with groceries and provide convenience to residents, tourists, and workers commuting to and from the Perth CBD by public transport.
60. While acknowledging that the locality experiences existing alcohol-related harm, the Applicant disputed that harm levels are at such a level where any increase, even small, would be unacceptable; relying upon the findings of its experts, which indicated it is extremely unlikely that the operation of the premises will have an adverse impact on the health or well-being of the local community. However, to the extent that there is a risk of harm arising, the Applicant submitted it has strategies in place to mitigate the risk.
61. In this regard, the Applicant submitted that the premises will be centrally located within the Centre, with a single entrance to the central mall and no external entrance. Further, the Centre management has confirmed that dedicated security guards will be employed at the Centre.
62. Further, the Applicant intends to implement the following security measures at the premises:
 - (a) a store layout designed to provide for an unobstructed view from the store into the mall, and supervision of all customers entering and exiting the store, with a clear line of sight that will also enable passive surveillance from outside the store by passers-by and nearby businesses;
 - (b) bright lighting throughout the store;
 - (c) an alarm system will be fitted, which will be monitored off-site; and
 - (d) CCTV cameras covering the store, in compliance with the Director's policy.
63. The Intervenor made representations on public interest matters, noting that the proposed premises will be located in an area that the Director has previously found to suffer from a high level of alcohol-related harm, particularly given the presence of at-risk persons in the locality and the number of service providers established to assist those affected by alcohol.
64. In this regard, the Intervenor also noted that even the Applicant's experts had observed homeless and/or alcohol dependent persons during site visits to the locality, including waiting outside of the BWS store for it to open.
65. Regarding the Bodhi Report, the Intervenor also expressed concerns over the reliability of some of its observations, given that the author of the Report identified consulting with stakeholders, even when some stakeholders declined to take part in the interviews; the use of the Western Australia Drug and Alcohol Mapping Tool in conducting interviews, which is not endorsed by the WA Drug and Alcohol Office for liquor licensing applications and a failure to provide feedback on the identity of stakeholders, particularly regarding comments attributed to police.

66. The Intervenor also provided data:
- (a) showing an upward trend in domestic assaults from 2014 - 2016, with non-domestic assault and threatening behaviour also increasing during that period; and
 - (b) the totals rates (per one thousand) for 2014 - 2016 of domestic assault, non-domestic assault and threatening behaviour in the Perth locality, which were considerably higher than both the Metropolitan and State totals.
67. Given the heightened harm data and presence of at-risk groups in the locality, the Intervenor recommended that additional security may assist in the further reduction of theft from the premises, should the licence be granted.
68. Following its review of the intervention, the Applicant submitted that it intends to implement the following additional measures at the store to deter theft from the premises:
- (a) electric sliding doors at the main entrance to the store;
 - (b) all spirits will be located behind locked glass;
 - (c) there will be locked cages in the cool room for the storage of RTD multi-packs and cartons; and
 - (d) at least two team members will be on duty at the store at all times, which will likely increase in peak periods, to increase surveillance and customer-service levels.
69. Buss J in *Woolworths v Director of Liquor Licensing*¹¹ stated that it is a notorious fact that in contemporary Australian life one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres.
70. It is my view that consideration of this 'notorious' fact, together with the Applicant's survey and other evidence, must lead to a finding that the grant of the application would cater to the requirements of consumers for liquor and related services, as expressed in s 5(1)(c).
71. However, given the representations of the Intervenor, the application must also be considered with regard to the other objects of the Act, one of which at object 5(1)(b) of the Act, is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. As already noted, where conflict arises in promoting the objects of the Act, I must weigh and balance the competing interests in each case.
72. In assessing the risks associated with the grant of this application, I must assess them, not in some abstract sense, but rather having regard to the proven circumstances of the area to which the application relates (refer Allanson J in *Carnegies Realty Pty Ltd -v- Director of Liquor Licensing* [2015] WASC 208 and Wheeler J in *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258). Accordingly, I must:
- (a) make findings that specifically identify the existing level of harm and ill-health in the locality, due to the use of liquor;
 - (b) make findings about the likely degree of harm to result from the grant of the application;

¹¹ [2013] WASCA 227

- (c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm;
 - (d) weigh the likely degree of harm, together with any relevant factors to determine whether the Applicant has established that the grant of the licence is in the public interest.
73. Based on a consideration of the evidence before me, I am satisfied that there are existing levels of harm and ill-health caused by the use of alcohol to people living in the locality. Ipp J in *Executive Director of Health v Lily Creek International Pty Ltd & Others*¹² stated that, “whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in *Malec v JC Hutton Pty Ltd*, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.”
74. While I accept that the introduction of another liquor store in the locality may cause an increase in harm or ill-health based on the materials submitted by the parties, there is nothing in that material to support a conclusion that there would be such an increase to levels that would be deemed unacceptable to the community or contrary to the Act’s harm minimisation object.
75. In making this determination, I have taken particular note of the fact that the proposed premises will be located within the Centre, with no external entrance into the store and that the Centre itself will engage security guards. In my view, both of these factors mitigate against the store appealing to homeless persons or other persons in the locality at risk of alcohol-related harm. Further, in the event that at-risk persons access the store, I am satisfied that the Applicant’s range of security initiatives are sufficient to minimise alcohol-related harm arising from the theft of alcohol from the store.
76. In relation to the Bodhi report, I accept the representations of the Intervenor that less weight should be afforded it, given that the persons contacted by Bodhi (as representatives of the identified stakeholders) presented their own personal opinions. In my view, there is little value in presenting anything other than the official view of stakeholders, as the personal opinions of an individual employee, no matter how nuanced, may be at odds with those of the actual stakeholder (i.e. their agency or employer). This is evidenced in the difference between the personal views of police officers spoken with by Bodhi and the views expressed by the Intervenor.
77. Additionally, I also hold concerns about the appropriateness of referencing stakeholders who declined to participate in Bodhi’s community engagement as being ‘contacted’ for the purpose of the application. In my view, it would be preferable for the report to differentiate between stakeholders who actively engaged with Bodhi and those who declined to comment, particularly where the number of parties who participated represents approximately only half of all parties identified.

¹² (2000) 22 WAR 510

78. In the determination of this application, I am required to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. In my view, the Applicant's harm minimisation strategies, which include:

- (a) electric sliding doors at the main entrance to the store;
- (b) all spirits will be located behind locked glass;
- (c) locked cages for the storage of RTD multi-packs and cartons; and
- (d) at least two team members on duty at the store at all times,

are mitigating factors in terms of any impact the conduct of business under the licence may have on the locality, such to distinguish the present application from those applications that have previously been refused. In this regard, I have also been persuaded by the Applicant's submissions regarding the one-stop shopping convenience offered to persons who commute on public transport, given the proposed pedestrian links between the Centre and the Perth Underground Railway Station and Busport.

79. Therefore, having regard to all of the evidence before me, I find that, subject to the imposition of trading conditions on the licence consistent with its submissions, the Applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest.

80. The Applicant also applied to the Director for approval, under s 104 of the Act, of the agreement with Charter Hall Holdings Pty Ltd, the owner of the premises, for the payment of percentage rent, based on a Heads of Agreement, dated 19 September 2017. This application is also approved.

81. Accordingly, the licence is conditionally granted, subject to the following conditions:

- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
- (b) compliance with the *Local Government Act 1995, Health (Miscellaneous Provisions) Act 1911* and any written law relating to the sewerage and drainage of these premise;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 29 November 2017;
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director being notified in writing at least 21 days prior to applicant wishing to trade under the licence;
- (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed;
- (f) lodgement of an executed lease agreement for the premises between the Applicant and Charter Hall Holdings Pty Ltd; and
- (g) the Applicant seeking confirmation of the grant on or before **30 May 2019** pursuant to s 62(4)(c) of the Act.

82. The following conditions will be imposed on the issue of the licence:

- (a) Trading hours:
 - (i) The permitted trading hours are those prescribed in s 98D of the Act. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.

- (b) Trading conditions:
 - (i) The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.
 - (ii) A CCTV video surveillance system must be in place and operational. The system must comply with the minimum requirements identified and be maintained in accordance with the Director's *Safety and Security at Licensed Premises* policy.
 - (iii) Electric sliding doors must be fitted and operational at the main entrance to the store.
 - (iv) All sprits and alcohol equal to or higher than 19% alcohol per volume must be displayed behind lockable glass cabinets and be accessible only by authorised staff.
 - (v) All RTD multi-packs and cartons must be stored in locked cages and be accessible only by authorised staff.
 - (vi) At least two team members must be on duty at the store at all times.

- (c) Tasting Condition:
 - (i) Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:
 - (1) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
 - (2) Tastings cannot be supplied to juveniles.
 - (3) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
 - (4) Compliance with the *Food Act 2008* at all times.
 - (5) Tastings per sample must not exceed the following measures:
 - a) Wine – 50 mls;
 - b) Beer – 100 mls; and
 - c) Spirits – 15 mls.
 - (ii) Free drinking water must be made available at all times that samples of liquor are available for tasting.

- (d) Profit Sharing Authorised:
 - (i) Pursuant to s 104 of the Act, the turnover percentage rental arrangements entered into by the licensee, Liquorland (Australia) Pty Ltd and the owner, Charter Hall Holdings Pty Ltd, as contained in the Heads of Agreement dated 19 September 2017 and lodged with the Director on 30 November 2017 are approved.
- (e) Compliance with Harm Minimisation Policy
 - (i) The licensee has lodged a copy of the House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

General

- 83. Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 84. The Applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 85. 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.
- 86. This matter has been determined by me under delegation pursuant to s 15 of the Act.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING