

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: VHT PERTH PTY LTD

OTHER PARTIES: COMMISSIONER OF POLICE (OBJECTOR)
TINDARA TARRICONE (OBJECTOR)
CHIEF HEALTH OFFICER (INTERVENER)

PREMISES: VHT PERTH PTY LTD

PREMISES ADDRESS: 412 WILLIAM STREET, PERTH

APPLICATION ID: A000223363

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR
STORE LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 21 JULY 2017

Introduction

- 1 This is an application, pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act), by VHT Perth Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises at 412 William Street, Perth.
- 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) and Tindara Tarricone, the licensee of the Lake Street Liquor Store. Pursuant to s 69 of the Act, the Chief Health Officer intervened in the application. The application was determined on the written submissions of the parties as permitted under ss 13 and 16 of the Act.
- 3 For the reasons which follow, I am of the view that the applicant has failed to discharge its burden under s 38(2) of the Act and the application should therefore be refused.

Summary of the applicant's case

- 4 The applicant operates an Asian supermarket at 412 William Street, Perth and seeks to establish a liquor store within a specified area of the supermarket. According to the applicant, the supermarket is well known for its wide range of Asian goods and cooking equipment. It was submitted that the premises is located in a section of the suburb of Perth that borders Northbridge, and Perth's major entertainment precinct, where many Perth residents and tourists visit to socialise, dine and be entertained.
- 5 The applicant submitted that to better serve its customers, it seeks approval for a liquor store licence that will complement the services provided at the supermarket. The applicant

intends to sell Asian liquor products together with mainstream beer, wine and spirits. The applicant expects the following groups will primarily make up its customer base:

- the supermarket's existing customers of both Asian and Western origin;
- tourists and visitors staying in nearby short term holiday accommodation;
- residents and visitors who wish to purchase packaged liquor to take with them to local BYO restaurants and cafes, social events or at home; and
- local businesses and corporate sales.

6 The applicant lodged a Public Interest Assessment (PIA) to support its application. The PIA indicates that:

- although the premises is located in the suburb of Perth, it comes under the statutory authority of the City of Vincent. The percentage of Chinese and Vietnamese residents in the suburbs that make up the City of Vincent varies between 3.4% (Mount Lawley) to 10.5% (Perth – East Perth).
- the City of Perth has a reasonable proportion of people with Chinese ancestry (13.4%);
- the proposed liquor store would be in an area which is seen by many as Perth's second Chinatown with a range of Asian cafes and restaurants, many of which are unlicensed;
- it is reasonable to assume that based upon the location of the premises and its proximity to Northbridge's entertainment precinct, many at-risk persons may be attracted to the locality. The applicant is aware that harm is being caused within the area due to the use of liquor (as evident by alcohol-related crime statistics republished in previous decisions of the licensing authority) however, such harm is not specified to a specific at-risk group. Rather the level of harm being experienced is at a level that would reasonably be expected within a locality that includes an entertainment precinct and a high concentration of licensed premises;
- the applicant is aware that the area attracts unsupervised groups of children and young people, however the applicant does not expect to experience any problems associated with juveniles attempting to gain entry to the premises due to the style and operation of the premises;
- there are 18 welfare service providers within the locality;
- there are 17 existing liquor stores within a 2km radius of the applicant's premises and according to the applicant, none of the existing liquor stores specialise in Asian packaged liquor products.

7 In view of the information contained in its PIA, the applicant contends that there are no at-risk groups that need to be considered for this application, taking into consideration the demographics of the locality, the premises' location and its proposed patron base and style of operation.

8 The applicant also submitted 385 Consumer Requirement Surveys and various letters of support.

Summary of the objections

The Commissioner of Police

- 9 The Commissioner objected on the following grounds:
- the grant of the application would not be in the public interest (s 74(1)(a)); 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 (s 74(1)(b)).
- 10 The Commissioner provided crime data for the total number of relevant offences against the person for Northbridge and Perth for the period 2014 to 2016. This data indicates that:
- the total number of domestic assault offences in the Northbridge locality has trended upwards;
 - the total number of alcohol-related domestic assault offences in the Perth locality have trended upwards, with a 189% increase from 1 January 2014 to 31 December 2016;
 - alcohol-related threatening behaviour offences have steadily increased in the Northbridge locality;
 - alcohol-related offending in the Northbridge locality was 16.6 times the metropolitan rate in 2016 for domestic assault, 141.5 times the metropolitan rate in 2016 for non-domestic assaults and 106.6 times the metropolitan rate in 2016 for threatening behaviour; and
 - alcohol-related offending in the Perth locality was 3.7 times the metropolitan rate in 2016 for domestic assault, 16.9 times the metropolitan rate in 2016 for non-domestic assaults and 10.1 times the metropolitan rate in 2016 for threatening behaviour.
- 11 The Commissioner provided data comparing Northbridge with Fremantle (each being an entertainment precinct), which indicated that rates of offending in Northbridge far exceeded the recorded rates of Fremantle.
- 12 The Commissioner also provided data form St John Ambulance, which indicates that from January 2015 to December 2016 St John Ambulance attended 803 assault cases in the Perth CBD and 1,469 alcohol intoxication cases.
- 13 The Commissioner submitted that the crime data clearly indicates that the locality surrounding the proposed liquor store currently experiences high levels of alcohol-related harm and the grant of the application has the potential to add to this elevated level of harm.
- 14 The Commissioner provided evidence of the existing at-risk persons and groups in the locality and details of local service providers who deal with people affected by alcohol addiction on a daily basis. These include:
- The Salvation Army (210 metres from the premises);

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- The Beacon (1km from the premises), which provides crisis and transitional accommodation with on-site services, including non-residential alcohol and drug services;
 - St Bartholomew's House (1.7km from the premises), which provides secure accommodation and support services for single men aged 18 years and older who need time to address their alcohol and drug issues;
 - Ruah Community Services (1km from the premises), an inner-city day centre for men and women who are homeless, or at risk of becoming homeless and who may have problematic alcohol or substance abuse issues;
 - Bridge House (1.3km from the premises), which provides a sobering up shelter and detoxification service;
 - Mission Australia's Drug and Alcohol Youth Service (1.8km from the premises), which provides young people and their families access to a comprehensive range of free and confidential alcohol and other drug services, including a residential alcohol rehabilitation program;
 - Aboriginal Alcohol & Drug Service (1.5km from the premises), which provides culturally secure and holistic programs and strategies that inform, educate and address the harmful effects of alcohol, drugs and other substances;
 - Passages Resource Centre (750m from the premises), which is a referral service for marginalised and street present young people aged 12 to 25 years who must deal with factors including substance abuse;
 - Next Step Drug and Alcohol Service (2km from the premises), which is a government health service that provides a range of treatment services for people experiencing problems with their alcohol and other drug use;
 - Women's Health and Family Services (400m from the premises), which specialises in women's health issues including alcohol and drug support.
- 15 The Commissioner provided letters from four service providers in the area, who each attested to the services they provide and the negative impact that alcohol is having on their clients:
- Ms Beverley Wilson-Malcolm, the Homeless Services Manager for The Salvation Army, stated that the grant of the application will make alcohol more readily available for homeless people in the area, who already have a high usage of alcohol, and this will just add to the already problematic issues in the inner-city parks and gardens;
 - Lee Lombardi from Mission Australia stated that the young people they deal with, who struggle with alcohol and drug issues, are extremely vulnerable and the grant of the application will exacerbate a situation that is already not being dealt with and further add to the harm being experienced in the area. Public drinking by park residents is also an existing problem;
 - Niamh Kiely from Passages Resource Centre stated that most young people they deal with currently have an addiction to alcohol and/or other drugs and a new liquor store in very close proximity to the resource centre will likely have a detrimental effect on the vulnerable people they service; and

- Matthew Nichols, the Homeless Services Manager for Ruah Community Services, stated that many of the clients they support have a range of issues such as homelessness, mental health, poor general health, financial hardship and unemployment. One of the major issues he often sees in clients is a problem with alcohol and other drug use. In 2016, the Ruah Centre had over 30,000 presentations with a daily average of over 120 clients in the four hours they are open to the public. A very high number of these clients present to the Centre intoxicated or under the influence of drugs and alcohol.
- 16 The Commissioner critiqued the applicant's PIA and submitted that the applicant had failed to assess, in any meaningful way, the likely impacts of the application upon the at-risk groups present in the locality. The Commissioner also submitted that the applicant's target market appears to be inconsistently presented throughout the PIA, which may raise doubts about the veracity of some of the applicant's evidence. It was submitted that the applicant has failed to support its application to the requisite standard.
- 17 In conclusion, the Commissioner submitted that the proposed premises will be situated in a locality with several on-going alcohol-related issues, particularly regarding harm and ill-health. This harm is not confined to the health issues of those abusing alcohol (as evidenced by the sheer volume of services established to facilitate assistance to those addicted to alcohol, in addition to deaths and hospitalisations in the Perth Electoral District), but extends to family members (reflected in the high rates of domestic assault offences) and other members of the community (reflected in the high rates of non-domestic assault offences). According to the Commissioner, the likely level of harm to result from the grant of the application will not be insignificant.

Tindarra Tarricone

- 18 It was noted by Ms Tarricone that the applicant applied for a liquor store licence at these premises in 2011, which was refused by the Director of Liquor Licensing and on review, also refused by the Liquor Commission. In refusing that application, the Liquor Commission stated that it was not persuaded, on the material before it, that the granting of the application in a locality that already has a high rate of outlet density for the sale of alcohol products was in the public interest. It was submitted that there has been no material change in the alcohol-related harm and ill-health occurring in Northbridge since the applicant's previous application was refused in 2012 and therefore the approval of the application continues to be inconsistent with the public interest.
- 19 Ms Tarricone also submitted that:
- the applicant is seeking the grant of a licence in an area that is known to experience alcohol-related harm and is targeting a group of people (non-English speaking migrants) considered to be at greater risk of alcohol-related harm; and
 - public drunkenness could become a serious issue for the area immediately surrounding the proposed premises which will then negatively impact on the quiet and good order of the locality.

Summary of the intervention

- 20 The CHO made representations regarding the potential for the grant of the application to cause harm or ill-health to people, or any group of people, due to the use of liquor and how that harm could be minimised.
- 21 Submissions were made on the following:
- the association of the sale of packaged liquor and general grocery items can reinforce alcohol as a non-harmful product and establish its cultural place as part of everyday life, shaping attitudes and behaviours towards alcohol;
 - the association of alcohol products with grocery items can lead to increased consumption and harm;
 - the premises is located in an area of Perth which borders Northbridge. There are existing levels of alcohol-related harm and ill-health occurring in Perth and Northbridge;
 - increasing the availability of packaged liquor in an environment that already experiences levels of alcohol-related harm poses a greater risk of further harm or ill-health; and
 - if the licence is granted, the imposition of conditions that seek to separate alcohol from the general grocery items would be an important harm minimisation approach.
- 22 According to the CHO, research has established a positive relationship between the availability of alcohol and the associated harm, problems and ill-health. The applicant has identified 17 existing liquor stores within the locality of the premises. In terms of the existing level of harm in the area, the following data was provided for the period 1 January 2016 to 31 December 2016:
- of the 767 assaults recorded in the suburb of Perth, 32% (246) were recorded as alcohol-related;
 - of the 401 assaults recorded in the suburb of Northbridge, 47% (188) were recorded as alcohol-related.
- 23 The CHO noted that packaged liquor sales are linked to a number of specific alcohol-related harm and ill-health outcomes and the harm from packaged liquor often occurs way from the licensed premises.
- 24 The CHO recommended that if the application is granted, conditions be placed in the licence to minimise the risk of harm in the locality.

Legislative framework

- 25 In determining this application, I have been guided by the following legal principles.
- 26 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.¹ An applicant must therefore adduce sufficient evidence to discharge this burden.

- 27 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.²
- 28 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.³
- 29 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 5.⁴
- 30 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.
- 31 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.
- 32 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.
- 33 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.
- 34 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.⁵

¹ Section 38(2) of the Act.

² *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).

³ *Re Gull Liquor* (1999) 20 SR (WA) 321).

⁴ *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).

⁵ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

35 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.

Reasons for determination

36 The applicant operates an Asian supermarket in William Street, Perth, bordering the entertainment precinct of Northbridge. According to the plans lodged by the applicant, the supermarket is approximately 347m² and the proposed liquor store will be 57m². The supermarket is quite modest in size. This is the second application to establish a liquor store at these premises. The first application, lodged in 2011, was refused by the Director of Liquor Licensing and by the Liquor Commission on review.

37 The applicant submitted that its customer base will be:

- the supermarket's existing customers of both Asian and Western origin;
- tourists and visitors staying in nearby short term holiday accommodation;
- residents and visitors who wish to purchase packaged liquor to take with them to local BYO restaurants and cafes, social events or at home; and
- local businesses and corporate sales.

38 The applicant proposes to sell a range of Asian liquor products together with main stream beer, wine and spirits (according to the applicant, 90% of stock will be Asian specific). The applicant's evidence indicates that there 17 existing liquor stores within a 2km radius of the applicant's premises. According to the Commissioner, there are 104 licensed premises in the locality which provide packaged liquor to the public. The evidence of the Commissioner is that some of the existing premises in the area sell Asian liquor products, including Dan Murphy's, Lion Oriental Food, Yee Wah Groceries (Asian wines for cooking purposes), two BWS stores and a Liquorland.

39 In considering whether the grant of the application is in the public interest, it is appropriate to consider both the positive and negative aspects of the application and how the application will promote the objects of the Act.⁶

40 In its PIA, the applicant submitted that the reasonable requirements of consumers and how those needs would be met by the grant of the application are matters relevant to the public interest. The applicant submitted a bundle of Consumer Requirements Surveys said to evidence consumer requirement for the proposed store, however in my view there is little probative value in this material given the nature of the survey form and its manner of collection. Recently, in LC 6/2017, the Liquor Commission stated:

"In previous decisions, the Commission 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

⁶ *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 per Martin CJ).

type of questions asked, and the geographical and demographic composition and nature of the locality.”

- 41 In later submissions, the applicant referred to the decision of Bank-Smith J in *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police & Ors* [2017] WASC 88, in which it was stated at [67] to [70]:

“... I consider s 5(1)(c) requires regard be directed to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in considering the issue of catering for consumer requirements.

Catering for consumer requirements is not to be considered in isolation. The potential and opportunity for proper development of the industry (including change) is not to be ignored.

Assuming there is appropriate probative evidence, the words invite a broader ambit of matters to be considered as part of assessing the diversity of consumer requirements and how they are to be catered for.

That does not diminish the role of the other objects to which the Commission must (and may) have regard.”

- 43 I note that the Liquor Commission in LC 18/2015 observed that:

“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.”

... Convenience is just one factor to be considered when considering the requirement of consumers for liquor - under the current Act it must be considered having regard to the proper development of the liquor industry, the other objects of the Act and, of course, the public interest.

... 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.”

- 44 Further, in LC 21/2015, the Commission stated:

“If convenience was seen to be meeting the “public interest” requirement, then the weight to be accorded to that factor would also need to be reviewed in the context of the proper development of the liquor industry. In that respect, the provision of liquor products in supermarkets, delicatessens, butchers, or other retail outlets where grocery items are purchased regularly, and at which it would merely be convenient to buy liquor, is viewed by the Commission as not being a sufficient reason to grant an application for a liquor store licence.”

45 Consequently, in assessing the evidence submitted, I am of the view that the likely benefit to the community from the grant of the application, in the context of object 5(1)(c), will be the added convenience to some people in purchasing packaged liquor at the supermarket. However, I find that this benefit is marginal at best, given:

- the high concentration of existing packaged liquor outlets in the locality which sell mainstream liquor products;
- the availability of Asian liquor products from some existing premises in the area;
- the supermarket is modest in size;
- the probative value of the survey material is limited; and
- many respondents to the applicant’s survey live outside the locality and would already have access to numerous packaged liquor outlets.

46 Object 5(1)(b) of the Act is directed towards the minimisation of alcohol-related harm in the community. 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.

47 The applicant accepts that harm is being caused within the area due to the use of liquor but opines that the level of harm being experienced is at a level that would reasonably be expected within a locality that includes an entertainment precinct and a high concentration of licensed premises. The applicant further states that there are no at risk groups for the purpose of the present application, taking into consideration the demographics of the locality, the premises’ location and its proposed patron base and style of operation. I do not accept the applicant’s submission in this regard.

48 The evidence of the Commissioner (see for example [10] and [12] above) and the CHO (see [22] above) establishes that the locality surrounding the proposed liquor store

currently experiences a high rate of alcohol-related harm, and that harm is not just experienced by those who abuse alcohol, but includes their family members and other members of the community. The upward trend in rates of domestic violence is of particular concern. The high rate of alcohol-related harm in this locality has been acknowledged by the licensing authority in many decisions.

- 49 Based on the evidence presented by the Commissioner and the CHO, in this case, I find that there is a high rate of pre-existing alcohol-related harm and ill-health in the locality surrounding the proposed liquor store.
- 50 Assessing the likely harm to result from the grant of the application is, by necessity, a matter of prediction, however, in making such an assessment I am not required to find as a fact that harm *will* occur because of the grant of the application, or to find a causal link. Ipp J in *Lily Creek*⁷ 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.”

- 51 Evidence has been presented of the relationship between the availability of alcohol and the resultant harm in the community and that packaged liquor is a contributor to alcohol-related harm. The grant of the application will result in an increase in the physical availability of packaged liquor in a locality already experiencing high rates of alcohol-related harm.
- 52 Further, the evidence establishes that there are many at-risk persons who are vulnerable to alcohol abuse in the area and some of these persons consume liquor in the surrounding parks and gardens. There is evidence of the numerous service providers in the area who are dealing with these at-risk persons. There is also evidence directly from some of the service providers of the nature and extent of the problems they deal with daily. For example, Matthew Nichols from Ruah Community Services stated that one of the major issues he sees in clients is a problem with alcohol and other drug use. In 2016, the Ruah Centre had over 30,000 presentations. There is evidence that at-risk persons are affected by alcohol when they present to the service providers. The evidence of the service providers should be accorded appropriate weight.⁸
- 53 I also note that part of the applicant’s target clientele are persons attending the unlicensed restaurants in the area. I think it is quite likely that some persons who consume liquor in the unlicensed restaurants in the area may then proceed to the nightclubs and bars in Northbridge, consuming more alcohol and placing themselves at risk. Pre-loading by persons attending licensed venues in Northbridge is not uncommon.

⁷ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

⁸ *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51).

54 In my view, given the location of the premises, I find it is highly likely, on the balance of probability, that over time the grant of the application will contribute to the high rate of alcohol-related harm that presently exists in the locality. I do not accept that the applicant's proposed manner of trade will sufficiently mitigate the potential risks of harm from the grant of the application because, in respect of the harm caused by packaged liquor, it occurs away from the licensed premises and in circumstances beyond the control of the applicant. Further, there are many at-risk persons in the area and some may be attracted to the premises given its location, including its proximity to the nearby parks and service providers.

55 There is no presumption in favour of the grant of the application, rather the opposite applies. The applicant must satisfy the licensing authority that the grant of the application is in the public interest: s 38(2). 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."

56 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 I must have regard.

57 Object 5(1)(a) of the Act is to regulate the sale, supply and consumption of liquor. This statutory policy of regulation is entirely consistent with taking a measured approach to the granting of licences and whether the grant of an application will contribute to the proper development of the liquor industry.¹⁰ Object 5(1)(b) of the Act is directed towards the minimisation of alcohol-related harm in the community.

58 Where conflict arises in promoting the objects of the Act, I must weigh and balance the competing interests in each case.¹¹

59 I have already found that, in my view, the positive aspects of the grant of the application are marginal. When I weigh the marginal benefits against the potential negative impacts and associated risks from the grant of the application, I am of the view that, in the circumstances of this case, greater weight should be given to the harm minimisation object of the Act over any other competing object.

60 In *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51 Edelman J stated:

'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

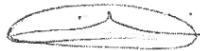
⁹ *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police & Ors* [2017] WASC 88

¹⁰ *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384).

¹¹ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

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."

- 61 Consequently, I find that the applicant has failed to discharge its onus under s 38(2) and satisfy me that the grant of the application is in the public interest. The application is therefore refused.
- 62 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.
- 63 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