

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LIMITED

OTHER PARTIES: CITY OF MANDURAH
CHIEF HEALTH OFFICER

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

APPLICATION ID: A000243286

PREMISES: ALDI MANDURAH
2 ALDGATE STREET, MANDURAH

DECISION OF: BRETT SNELL
DEPUTY DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 11 SEPTEMBER 2018

Preamble

- 1 On 8 August 2017, an application was made to the Director of Liquor Licensing (the Director) by ALDI Foods Pty Limited (the Applicant) for the conditional grant of a liquor store licence for premises to be known as ALDI Mandurah Liquor Store and situated at 2 Aldgate Street, Mandurah (the premises).
- 2 The application was made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act) and was advertised in accordance with instructions issued by the Director; which lead to notices of intervention being lodged, as permitted by s 69 of the Act, by the City of Mandurah (the First Intervenor); and the Chief Health Officer (the Second Intervenor).
- 3 On 30 November 2017, programming orders were made pursuant to ss 13 and 16 of the Act, for the parties to lodge further evidence and submissions. As 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.

The application

- 4 The Applicant seeks the conditional grant of a liquor store licence to enable it to operate a small liquor store as part of the ALDI Supermarket in Mandurah.
- 5 The application was supported by a Public Interest Assessment (PIA) and other submissions, including reports by Patterson Research Group, who conducted a survey of consumers within the locality and Deep End Services, who considered the demographic profile of the locality surrounding the premises.
- 6 The PIA submitted that:

- (a) the ALDI Mandurah supermarket, which opened on 13 July 2016, is already a popular stand-alone supermarket;
- (b) the licensed premises will have no presence outside of the ALDI supermarket, with no external access, façade or signage and will be a small but important feature of the supermarket; and
- (c) ALDI's published mission is to provide the public with '*incredibly high quality at impossibly low prices.*'
- 7 The Applicant also submitted that the premises will be typical of the ALDI store model and will have the following features:
- (a) a small browse area of approximately 21m², together with a single licensed checkout;
- (b) about 95 non-refrigerated liquor products on offer, including 64 different wines (including 4 ciders), 16 different beers of full, medium and light strength; and 15 different spirits, including bourbon, brandy, gin, scotch, vodka and liqueurs; and
- (c) some liquor products that are unique to the Applicant.
- 8 According to the Applicant, the combination of the ALDI Mandurah liquor store within the ALDI supermarket will provide true one-stop ALDI shopping convenience.
- 9 In relation to those matters prescribed in s 38(4) of the Act, the Applicant submitted a risk assessment of the harm or ill-health that might be caused to people, or groups of people within the locality, due to the use of liquor, which was compared with average rates for the City of Mandurah and the State. The Applicant's assessment included that:
- (a) there is a lower percentage of children and young people in the locality compared to the State average;
- (b) the percentage of Aboriginal and Torres Strait Islander people living in the locality is similar to the State average; and
- (c) the percentage of couple families living without children in the locality is significantly higher than the State average.
- 10 The Applicant also submitted that Census statistics are an indicator of socio-economic standing and based on the 2011 Census data, noted the following:

Socio-economic indicator	Mandurah	Locality average	City of Mandurah	State average
Employed full-time (2011)	52.5%	52.8%	55.1%	60.7%
Employment part-time (2011)	29.3%	31.1%	30.7%	28.1%
Unemployed (2011)	11.4%	8.2%	7.1%	4.7%
Median weekly income - personal	\$494	\$538	\$555	\$724
Median weekly income - family	\$1093	\$1322	\$1435	\$1910

Median weekly income - household	\$805	\$1083	\$1162	\$1595
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- 11 While acknowledging that these indicators suggest the socio-economic standing of the locality is below the State average, the Applicant suggested that they “more accurately reflect that there is a significant retiree community” in the locality.
- 12 In terms of social health indicators for the locality, the Applicant submitted that:
- a 2014 report published by the Drug and Alcohol Office found that the City of Mandurah recorded ‘significantly lower’ rates of alcohol-related hospitalisations than the corresponding State averages and concluded that the locality ‘*could not be considered to be a community where “the potential for harm to vulnerable groups outweighs the benefits to consumers”*’;
 - while there is an elevated level of crime occurring in the suburb of Mandurah based on information accessed from published statistics from the WA Police Department’s records of crime for the locality for the financial years of 2015/2016 and 2016/2017, the level of crime occurring in the surrounding suburbs is relatively low; and
 - the number of assaults in the locality in 2016/2017 financial year was lower than the 2015/2016 financial year.
- 13 In accordance with the Director’s *Public Interest Assessment* policy, the Applicant identified 25 existing licensed premises within the locality, including eight liquor stores and six taverns, of which two, namely Boathouse Tavern and Silver Sands Tavern, are currently authorised to sell packaged liquor, as detailed in the following table:

Licence type	Premises name	Address	Distance
Liquor store	Liquorland Mandurah	Sholl Street	1.1km
Liquor store	Dan Murphy’s Mandurah	Shop 2, 23 Pinjarra Road	1.2km
Liquor store	Liquorland Mandurah Forum	Pinjarra Road	900m
Liquor store	Marina Cellars	16 Dolphin Drive	1.7km
Liquor store	Greenfields Liquor Store	Shop 2, Greenfields Shopping Centre, Murdoch Drive	1.8km
Liquor store	BWS – Beer Wine Sprites Greenfield	L0t 101, 96 Bortolo Drive	2.6km
Liquor store	Liquor Barons Port Mandurah	Shop 5, 10 Old Coast Road	1.9km
Liquor store	Celebrations at Erskine	Erskine Village Shopping Centre, Lot 34 Old Coast Road	2.0km
Tavern	Boathouse Tavern	Peel Shopping Centre, Pinjarra Road	1.0km
Tavern	Silver Sands Tavern	176 Mandurah Terrace	1.5 km

- 14 In view of the above, the Applicant submitted that the '*closest packaged liquor outlet to ALDI Mandurah is Liquorland Mandurah Forum, which is approximately 900m*' which would require '*customers shopping at ALDI...to travel some distance to access packaged liquor*' where an '*entirely separate driving trip is required.*'
- 15 The Applicant also submitted that of the few small risks that exist in this case, several valuable risk minimising measures have been proposed and outlined strategies to minimise harm or ill-health, including the Applicant's experience and the low risk ALDI liquor model (i.e. small floor area, exclusive products, no chilled products and no external signage).

Representations of the First Intervenor

- 16 The First Intervenor made representations, pursuant to s 69(7) of the Act and asserted that the proposed licensed premises may operate in a manner that causes suffering, undue offence, annoyance, disturbance and/or inconvenience in the surrounding community. In this regard, it was submitted that:
- (a) the *City of Mandurah Health and Wellbeing Profile 2017*, recently released by the South Metropolitan Health Promotion Service (SMHPS), reported higher rates of risky/high-risk drinking behaviour for both short and long-term harm for Mandurah in comparison to the WA State and South Metropolitan Area averages;
 - (b) it is well known that there is a link between the availability of packaged liquor and harm that occurs away from the licensed premises, including domestic violence; and
 - (c) a recent research report of the *Peel Says No to Violence Project* stated there had been a 14% increase in domestic violence incidents attended by police between the 2014/15 and 2015/2016 periods for the Peel region.
- 17 Further, the First Intervenor:
- (a) considered that the Applicant's PIA did not address key community issues specific to the local area, such domestic violence assaults and the impact of low cost packaged liquor availability in suburbs of high disadvantage;
 - (b) noted the extensive number of liquor stores and taverns serving packaged liquor within the precinct;
 - (c) noted increasing rates of assaults; and
 - (d) noted the Mandurah suburbs SEIFA¹ Index of 859 indicating significant disadvantage within the community, which the Applicant's PIA failed to address;

¹ SEIFA is an acronym for Socio-Economic Indices for Areas. Developed by the Australian Bureau of Statistics (ABS), SEIFA ranks geographic areas across Australia by their socio-economic characteristics with data from the five-yearly Census. The Index of Relative Socio-Economic Disadvantage combines data on income, education levels and public housing as markers of relative socio-economic disadvantage. SEIFA scores from the 2011 SEIFA rankings were used

Representations of the Second Intervenor

- 18 The Second Intervenor made representations regarding the risks of alcohol-related harm specific to the application and on how those risks could be minimised, with the following matters identified as relevant factors:
- (a) ALDI Mandurah intends to provide the public with consistently low-priced alcohol products from within its supermarket and there is a relationship between low cost liquor, consumption and increased alcohol-related harm;
 - (b) there is alcohol-related harm occurring in the locality, some of which is higher than the State; the association of alcohol products with everyday grocery items can lead to increased consumption and harm;
 - (c) local alcohol and other drug treatment service providers raise concerns regarding ALDI's proposal and the potential impact on clients accessing treatment for their alcohol use; and
 - (d) between the period 2014/2015 to 2016/2017, there were 1,591 treatment episodes for people residing in the locality at services funded by the Mental Health Commission (of which alcohol was identified as the primary drug of concern in almost one in three (30%)).
- 19 Accordingly, the Second Intervenor submitted that it *'is the specific, combined features of this application (e.g. increased visibility and access to convenient, low priced liquor purchased with grocery items) which can impact on the level of harm or ill-health in the locality.'*
- 20 In relation to harm and ill-health concerns about the integration of alcohol into a supermarket setting, the Second Intervenor submitted that national and international research demonstrates that the availability of alcohol within the supermarket setting can lead to an increase in impulse and unplanned purchasing, which can result in increased consumption and associated harm.
- 21 The Second Intervenor's concerns about harm and ill-health due to the availability of cheap liquor also included the Applicant's:
- (a) policy of *'consistently competitive pricing'*;
 - (b) 'special buys' promotions every Wednesday and Saturday;
 - (c) intention to sell both ALDI exclusive products and mainstream alcohol brands, which are available at many other packaged liquor outlets and sold at ALDI at frequently discounted prices and advertised as such; and
 - (d) research demonstrates a relationship between socio-economic status and harmful alcohol use.

- 22 In this regard, it was submitted that there are 22 wine varieties which are priced below \$5 and some as low as \$2.89; and mainstream beer is well below the price available from other outlets (Victoria Bitter 10pk at ALDI was offered at \$18.99 compared to a 6pk at Dan Murphy's for \$18.49.)
- 23 Accordingly, the Second Intervenor submitted that the price differences between ALDI and other outlets is significant in some cases and there is a relationship between low price, consumption and alcohol-related harm, with reference to a 2011 self-reported Perth consumer survey in which 26% of respondents claimed they would buy more frequently than usual if cheap alcohol was available and another 33% claimed they would buy more than they planned if cheap liquor was available. Additionally, 24% claimed they would drink more as a result of a new store opening which provided access to cheaper alcohol.
- 24 The Second Intervenor also made representations that when lower priced liquor products are stocked:
- (a) customers may be more inclined to purchase more than they intended, increasing the likelihood for harm or ill-health to occur; and
 - (b) while those most at-risk are most likely to experience harm and ill-health, overall, lower prices mean a greater likelihood that a broader population will also be affected, via changes in individual drinking behaviours.
- 25 The intervention was accompanied by a statement from the South Metro Community Alcohol and Drug Service (SMCADS) Clinical Coordinator. The SMCADS works with residents in Mandurah and surrounding suburbs, offering individual and group counselling to prevent and reduce the harmful effects of alcohol and other drugs on people, families and the community. The Clinical Coordinator noted the following in respect of price on consumption by at-risk individuals:
- 'When alcohol is cheap, clients may be more likely to purchase larger amounts to consume. This is of concern given ALDI Mandurah intends to sell very low priced liquor, for example less than \$3.00 for a bottle of wine. It is my professional experience that some clients with limited finances will make decisions based on quantity, rather than quality... leading to substantially increased level of intoxication and harm that may come to that individual and others.'
- 26 The Second Intervenor also submitted that low alcohol prices at ALDI Mandurah could impact on the health and wellbeing of the broader population and not just those most at-risk, when consideration is given to the scientifically based drinking guidelines developed by the Australian National Health and Medical Research Council on risks for alcohol-related conditions or harm, which increases with the number of standard drinks consumed on a drinking occasion, but also over a lifetime.
- 27 The Second Intervenor also outlined the potential impact of the proposed premises influencing drinking patterns on the long-term relative risk for illness, based on the number of standard drinks consumed per day. For example, drinking three to four standard drinks

(e.g. two to three glasses of wine) a day increases the risk of oral cavity and pharynx cancer by 131%.

28 The Second Intervenor also submitted that:

- (a) higher alcohol prices have been shown to reduce both acute (e.g. traffic accidents, violence and suicide) and chronic (e.g. alcoholic liver cirrhosis and alcohol-related cancers) alcohol-related death and morbidity;
- (b) the nature of harm that occurs in association with packaged liquor is relevant in the context of the proposed locality and the wider community of ALDI Mandurah, if the application were to be granted;
- (c) a study on the relationship between different types of licensed premises and various indicators of alcohol-related harm across local areas of Western Australia showed that, per capita, alcohol sales made by liquor stores were closely and positively related to levels of assaults, road crashes, breath alcohol levels of drink-drivers and alcohol-related morbidity (e.g. injury and illness) and the greater the per capita alcohol sales made, the greater the levels of alcohol-related harm;
- (d) the increased availability of packaged liquor has been found to be associated with increased rates of assaultive violence, child maltreatment, vehicle accidents and injuries among young adults;
- (e) a publication by Livingston found the availability of packaged liquor was positively associated with a number of harm indicators, including rates of assault, domestic violence, chronic disease and heavy episodic drinking;
- (f) the relationship between alcohol sold at off-site premises and an increased risk of violence is also well documented in research literature; and
- (g) when considered alongside the specific features of ALDI Mandurah, research literature provides some guidance regarding the potential for alcohol-related harm that may result from the introduction of a high-convenience packaged liquor outlet that is integrated within the grocery shopping experience and selling alcohol at low prices, which is particularly relevant, given data shows the locality ALDI proposes to operate within a locality that already experiences a level of alcohol-related harm.

29 With respect to the profile of the locality surrounding the proposed liquor store, the Second Intervenor submitted that the most recent SEIFA data shows that there are areas of disadvantage in the locality and that five of the six suburbs within the locality indicate a greater level of disadvantage and a lack of advantage in general.

30 Accordingly, the Intervenor also submitted that evidence of socio-economic disadvantage is further demonstrated when comparing the area in which the Applicant proposes to trade to the Greater Perth Region, particularly given that ALDI Mandurah is situated in the second most disadvantage Local Government Area in the Greater Perth Region. Further, the Second Intervenor also submitted that the City of Mandurah has consistently experienced a higher rate of unemployment and in the 2017 March quarter,

unemployment in the City of Mandurah was 10.86%, which is much higher than the State rate of 6.20%.

- 31 Submissions were also made that community characteristics may increase the potential for harm as a result of the introduction of the ALDI Mandurah liquor store and that within the cycle of economic disadvantage, unemployment can exacerbate alcohol-related problems, with links between unemployment and poor health and other psychological effects, which are often associated with alcohol use.
- 32 Representations were also made that data indicates that per capita consumption² (PCC) in Mandurah is higher than the State, which can also be indicative of levels of alcohol-related harm occurring.
- 33 According to the Second Intervenor, the most recent available Western Australian PCC estimates pertain to 2011/12 and that Mandurah, which is situated within the Statistical Area 3 (SA3) of Mandurah, consistently reports higher PPC than the State rate, as shown in the following table:

Year	Mandurah SA3 PCC (pure alcohol L)	Western Australia PCC (pure alcohol L)
2011/12	13.01	11.94
2010/11	14.21	13.09
2009/10	13.50	12.36
2008/09	13.86	11.62

- 34 According to the Second Intervenor, there *'is robust evidence which indicates, as alcohol consumption increases, so do a range of short and long-term harms, social and legal consequences.'*³
- 35 The Second Intervenor also submitted that it is relevant to note that Mandurah experiences a substantially higher rate of alcohol-related domestic assault offences than any other suburbs in the locality and the State. Supporting data was provided on the rate of alcohol offending in the locality, which indicates that between 1 January 2014 and 31 December 2016 there were 1250 reported domestic assaults offences in the locality, of which 29.2% were alcohol related.
- 36 It was also submitted that between 1 July 2014 and 30 June 2017, there were 460 drink-driving charges recorded using the 'Breath Test Form' where the suburb of last drink was named as Mandurah, Dudley Park, Greenfields and Coodanup, of which 58.3% were recorded as having their last drink at a private residence, public place or vehicle, which corresponds to people who would have been drinking packaged liquor.

² PCC is defined as litres of absolute (pure) alcohol consumed, divided by the population aged 15 and over. The Second Intervenor also stated that the PCC estimates presented within the intervention were calculated using Estimated Service Population figures for those aged 15 years and above

³ National Health and Medical Research Council (2009). *Australian guidelines to reduce health risks from drinking alcohol*, Commonwealth of Australia: Canberra, ACT

- 37 The Second Intervenor also submitted that consideration of alcohol-related hospitalisation data is relevant, as it provides some reference to the potential for future alcohol-related harm to occur. Overall, for the period of 1 January 2013 to 31 December 2015, the total hospitalisation rate (which indicates both short term conditions, such as acute problems such as injury and long term conditions, resulting in chronic disease, conditions caused by harmful drinking patterns) for 'all alcohol-related conditions' for residents in the aforementioned SA2's was 'significantly higher' (1.09 times) than the corresponding State rate.
- 38 The Second Intervenor also submitted that despite the applicant's claims in its PIA that there will be no external advertising of alcohol at ALDI Mandurah, the Applicant has overt external advertising and promotion of alcohol at a recently opened ALDI store.

Legislative and legal framework

- 39 In *Woolworths Ltd v Director of Liquor Licensing*⁴ His Honour Buss JA set out the statutory framework for a determination of an application, namely:
- (a) by section 38(2) of the Act, an applicant has to satisfy the licensing authority that the granting of an application is in the public interest;
 - (b) the expression 'in the public interest', when used in a statute, imports a discretionary value judgment⁵;
 - (c) the factual matters which the licensing authority is bound to take into account, in determining whether it is satisfied that the granting of the application is in the public interest are those relevant to the objects of the Act, as set out in s 5(2) of the Act;
 - (d) the factual matters which the licensing authority is entitled to take into account, in determining whether it is satisfied that the granting of an application is in the public interest are those set out in s 38(4) of the Act;
 - (e) s 5(2) is mandatory whereas section 38(4) is permissive; and
 - (f) on the proper construction of the Act (in particular, ss 5(1), 5(2), 16(1), 16(7), 30A(1), 33 and 38(2)), the licensing authority is obliged to take into account the public interest in:
 - (i) catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry in the State; and
 - (ii) facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State.

⁴ [2013] WASCA 227

⁵ *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson & Gaudron JJ). If the statute provides no positive indication of the considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of 'the public interest' will ordinarily be confined only by the scope and purposes of the statute

- 40 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.
- 41 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;
 - (c) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of the Act; and
 - (d) to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.
- 42 Each application must be considered on its merits and determined on the balance of probabilities pursuant to s 16 of the Act. Section 16 further provides for the licensing authority to act according to equity, good conscience and the substantial merits of the case; without undue formality and is not bound by the rules of evidence.
- 43 When tension arises between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services, the licensing authority needs to weigh and balance those competing interests.⁶
- 44 While there is a positive onus on an applicant to discharge its obligation under s 38(2) of the Act⁷, an intervenor carries no onus to establish their assertions of fact or opinion, but rather provides representations to assist the licensing authority to make an informed decision.⁸

⁶ Refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258

⁷ Refer *Liquorland (Australia) Pty Ltd v Executive Director of Health* [2013] WASC 51; *Seoul Mart City Pty Ltd v Commissioner of Police* (LC27/2014)

⁸ see Greaves J, *Re Gull Liquor* (1999) 20 SR (WA) 321

45 In determining whether the grant of an application is ‘in the public interest’, the licensing authority is required to exercise a discretionary value judgment confined only by the scope and purpose of the Act.⁹ Further, s 33(1) provides that 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.

Determination

46 Having regard to all the material submitted in support of the application and submissions made on behalf of the Applicant, it is apparent that the primary basis upon which the Applicant has contended the application should be granted is that it will allow a convenient, one-stop shopping experience for those persons who attend the ALDI supermarket to purchase their groceries and provide consumers in Mandurah with choice, diversity and competition.

47 Buss JA observed in *Woolworths Ltd v Director of Liquor Licensing* (supra) 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.”

48 Consistent with this notorious fact and after considering the Applicant’s evidence and submissions, including the Patterson survey which shows that many people living in the locality will shop at ALDI Mandurah on a regular basis, I find that the grant of the application would cater to the requirements of consumers for liquor and related services in accordance with object 5(1)(c) of the Act. However, catering to the requirements of consumers is not to be considered in isolation.¹⁰

49 In this regard, both of the Intervenors have introduced evidence that there:

- (a) is harm and ill-health occurring in the Mandurah locality, due to the use of liquor; and
- (b) are a number of at-risk groups that need to be considered in determining this application.

50 In this regard, one of the primary objects of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor.¹¹

51 While the Act’s primary objects do not have precedence over each other, where conflict arises in promoting them, I am required to weigh and balance the competing interests¹², assigning weight to those interests and other relevant considerations.¹³

⁹ 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

¹⁰ Refer Banks-Smith J in *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2017] WASC 88

¹¹ Object 5(1)(b)

¹² Refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258

¹³ Refer *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356

- 52 Further, where the Act's harm minimisation object is relevant to the determination of an application, I must also adopt the approach outlined by Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*¹⁴ and:
- (a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
 - (b) make findings about the likely degree of harm to result from the grant of the application;
 - (c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
 - (d) weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant has satisfied the licensing authority that it is in the public interest to grant the licence.
- 53 In my view, the evidence indicates that there are a number of risk factors for alcohol-related harm in the locality surrounding the proposed liquor store, including:
- (a) total hospitalisation rates for 'all alcohol-related' conditions;
 - (b) the Applicant's acknowledgment that an elevated level of crime occurring in the suburb of Mandurah;
 - (c) that between 2014 and 2016, some suburbs within the locality consistently experienced higher rates of alcohol-related domestic assault offences in comparison to the State rate, together with reports of a 14% increase in alcohol-related domestic violence incidents attended to by police between 2014/15 and 2015/2016 for the Peel region;
 - (d) WAPOL data on drink-driving charges; and
 - (e) that the Statistical Area 3 (SA3) of Mandurah consistently reports higher PPC than the State rate.
- 54 While the Applicant referenced the 2014 report on *Alcohol-related hospitalisations and deaths in Western Australia, Regional Profile: North Metro* to state that '*the City of Mandurah records "significantly lower" rates of alcohol-related hospitalisations and deaths than the corresponding State averages*' and conclude that the locality is in a positive state of social health, the First Intervenor referenced the *City of Mandurah Health and Wellbeing Profile 2017*, recently released by the Metropolitan Health Promotion Service, which reported higher rates of risky/high-risk drinking behaviour for both short and long-term harm in the locality, when compared to the WA State and South Metropolitan Area averages.

¹⁴ [2015] WASC 208

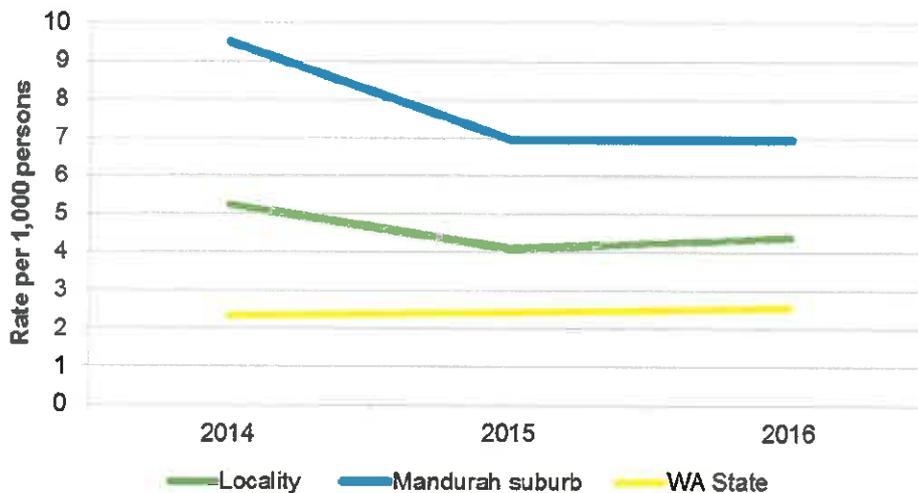
- 55 Further, in contrast to the Applicant's assertions, the Second Intervenor submitted that for the period 1 January 2013 to 31 December 2015, the total hospitalisation rate for 'all alcohol-related' conditions for residents of Mandurah SA2, Greenfields SA2, Mandurah-South and Erskine SA2 was 'significantly higher' (1.09 times) than the corresponding State rate, with the following four specific alcohol-related conditions being significantly higher in the locality than the State rate for all persons:
- (a) alcoholic liver disease (1.95 times);
 - (b) other alcohol-related diseases (1.25 times);
 - (c) motor vehicle accident injuries (1.28 times); and
 - (d) other alcohol-related injuries (1.24 times).
- 56 Further, for the same period, the Second Intervenor submitted that the total hospitalisation rate for 'all alcohol-related conditions' for male residents was also 'significantly higher' (1.17 times) than the corresponding State rate, with the following four 'alcohol-related conditions' being significantly higher in the locality than the corresponding State rate for male residents:
- (a) alcoholic liver disease (1.91 times);
 - (b) other alcohol-related diseases (1.30 times);
 - (c) motor vehicle accident injuries (1.33 times); and
 - (d) other alcohol-related injuries (1.28 times).
- 57 The Applicant asserted that the reliance on unpublished statistics by the Second Intervenor should be treated with a 'high degree of caution and given minimal evidentiary weight', whereas the Second Intervenor submitted that the data presented in the intervention *'is markedly more up-to-date and relevant to the locality'* than that relied upon by the Applicant in its PIA, which dated from a report published in 2014.
- 58 Further, while the Applicant acknowledged an elevated level of crime occurring in the suburb of Mandurah for the financial years 2015/2016 and 2016/2017, it emphasised that *'the level of crime occurring in the surrounding suburbs that make up the balance of the locality are very low. Therefore, when the Locality is assessed on a holistic basis, the rate of offending should not be a cause of concern'*.
- 59 In the alternative, the First Intervenor stated that:
- (a) the link between the availability of packaged liquor is well known; and
 - (b) harm that occurs away from the licensed premises includes domestic violence,
- before submitting that a recent research report of the *Peel Says No To Violence Project* revealed there had been a 14% increase in domestic violence incidents attended to by police between 2014/15 and 2015/2016 for the Peel region.

60 Further, the Second Intervenor also relied upon WAPOL data to demonstrate that there are existing levels of harm, including violence, occurring within suburbs in the locality and that for the period between 1 January 2014 and 31 December 2016 (inclusive), there were 1250 reported domestic assault offences in the suburbs of Mandurah, Greenfields, Coodanup and Dudley Park, of which almost one third (29.2%, n=365) were recorded as alcohol-related.

61 According to the Second Intervenor, the following table demonstrates that between 2014 and 2016, some suburbs within the locality consistently experienced higher rates of alcohol-related domestic assault offences in comparison to the State:

	2014	2015	2016
Coodanup	5.11	2.90	5.32
Dudley Park	1.91	2.65	2.02
Greenfields	2.36	1.89	2.07
Mandurah	9.50	6.95	6.96
WA State	2.33	2.44	2.55

62 To graphically demonstrate the extent of alcohol-related domestic assault rate per 1000 residents in the locality, the suburb of Mandurah and whole of the State for the period of 2014 to 2016, the Second Intervenor submitted the following graph:



63 Accordingly, the Second Intervenor submitted that the area where the Applicant proposes to trade experienced alcohol-related domestic assault offence rates at more than double the State in 2014, 2015 and 2016 and that this is of concern, given the potential for greater levels of harm to be experienced should a conveniently located, low cost liquor store be introduced into the locality.

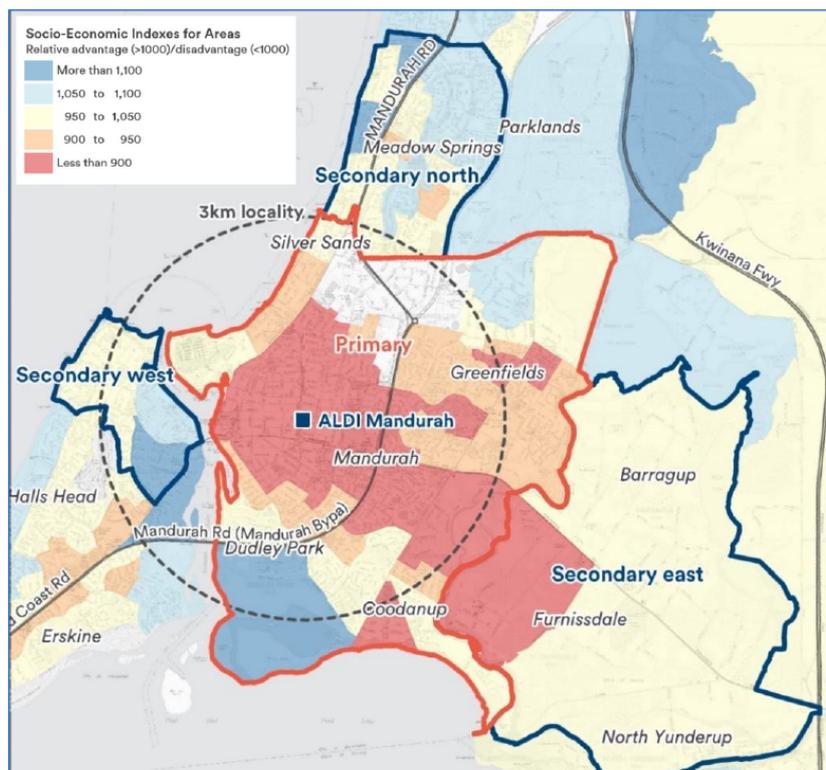
64 The Second Intervenor also referenced WAPOL data on drink-driving charges and submitted that between 1 July 2014 and 30 June 2017, there were 460 drink-driving charges recorded using the Breath Test Form, with almost three in five (58.3%, n=268) recorded as having their last drink at a private residence, public place, or vehicle, which corresponds to people who would likely have been drinking packaged liquor.

- 65 Further, of all drink-driving charges with a place of last drink associated with the consumption of packaged liquor, over nine in 10 (95.1%, n=255) were recorded with a Blood Alcohol Content over the legal limit to operate a motor vehicle (0.05), with 39 offences recorded as *driving over the influence*.
- 66 In relation to the drink driving statistics submitted by the Second Intervenor, the Applicant reiterated the comments of the High Court in *CAL (No 14) Pty Ltd v Motor Accidents Insurance Board & Ors*¹⁵ to assert that '*Balancing the pleasures of drinking with the importance of minimising the harm that may flow to a drinker is a matter of personal decision and individual responsibility. It is a matter more fairly placed on the drinker than the seller of the drink.*'
- 67 However, in my view, the evidence presented by the parties establishes that there is a high level of pre-existing alcohol-related harm in the locality surrounding the proposed premises, particularly in the suburb of Mandurah.
- 68 Further, I consider that the evidence also establishes there are other risk factors present in the locality, which are also relevant to assessing whether the community is vulnerable to the likely negative impacts of alcohol use and the likely degree of harm to occur from the grant of the application. These include that:
- (a) most of the locality, which coincides with the Applicant's primary catchment area, presently experiences a high level of socio-economic disadvantage;
 - (b) five of the six suburbs within the locality indicate a greater level of disadvantage and a lack of advantage in general based on State SEIFA data, with the suburbs of Mandurah and Coodanup achieving a SEIFA decile of one, Greenfields a decile of two, Dudley Park a decile of 3 and Silver Sands a decile of 4;
 - (c) the Mandurah Local Government Authority (LGA) was ranked as the second most disadvantaged LGA in the greater Perth Region;
 - (d) the locality experiences below average personal, family and household income levels;
 - (e) unemployment in the locality and surrounding areas are high, with unemployment in the Mandurah SA2 being 22.8% compared to the Western Australian rate of 6%; further unemployment in Mandurah South SA2 was 15.5%; Greenfields SA2 was 13.8%, Mandurah East SA2 was 10.1% and the City of Mandurah was 10.9%;
 - (f) information provided the SMCADS Clinical Coordinator regarding concerns over the application and its potential impact on clients accessing treatment for alcohol use, which confirms there are persons in the locality seeking treatment for alcohol-related problems;

¹⁵ (2009) 239 CLR 390

- (g) higher levels of PCC occur within Mandurah SA3 at consistently higher rates than both the Western Australian and National averages and there is robust evidence indicating that as alcohol consumption increases, so do a range of short and long-term health, social and legal consequences; and
- (h) residents from the locality form part of the major catchment area for ALDI Mandurah and are therefore likely to make regular visits based on proximity and competition.

69 In this regard, the report by Deep End Services included a map of SEIFA scores at the small area level, which clearly show localised areas of advantage or disadvantage across the catchment area, with the primary trade area for the proposed premises and the premises itself bounded on all sides by an area of disadvantage (i.e. the suburb of Mandurah), which scored less than 900 on the SEIFA index, as illustrated below:



70 In *Executive Director of Health v Lily Creek International Pty Ltd & Others*¹⁶ Ipp J 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.’¹⁷

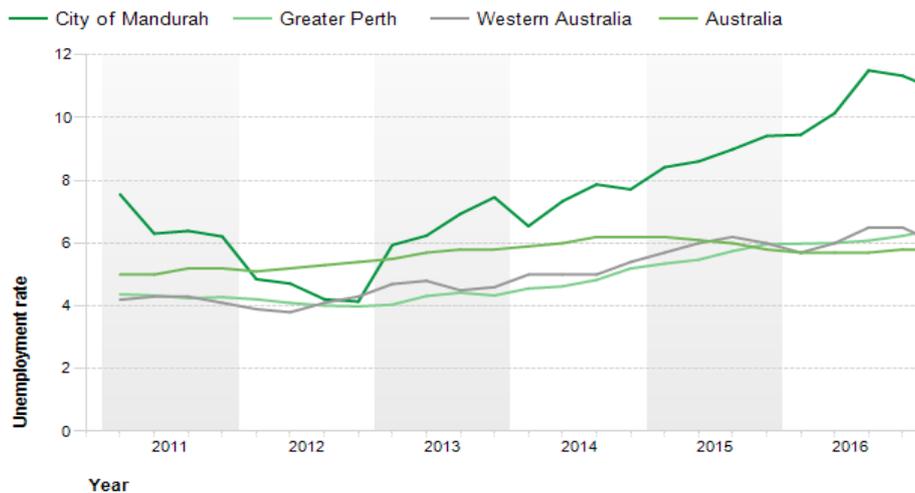
71 While the Applicant acknowledged an elevated level of crime occurring in the suburb of Mandurah for the financial years 2015/2016 and 2016/2017, it emphasised that the level of crime occurring in the surrounding suburbs was low and therefore submitted that the

¹⁶ (2000) 22 WAR 510

¹⁷ Lily Creek, *supra*

'area cannot be said to be of any particular or higher risk in the context of the very small store proposal.' Further, the Applicant highlighted that 'several valuable risk minimising measures have been proposed' including the Applicant's experience and the low risk ALDI liquor model.

- 72 The Second Intervenor submitted that City of Mandurah has consistently experienced a higher rate of unemployment since 2013 in comparison to Greater Perth and the State, as shown in the following graph¹⁸ and in consideration of the City of Mandurah's economic profile, noted that "In the 2017 March quarter, the unemployment rate in the City of Mandurah was 10.86%", which can be contrasted against the State rate of 6.20%.



- 73 Conversely, the Applicant sought to address the high unemployment levels and low SEIFA scores by asserting that they reflect the significant retiree community in the locality and referenced a finding of the Liquor Commission in *Redport Enterprises Pty Ltd*¹⁹ to support this contention. However, I do not consider this reference to be determinative, given that in *Woolworths Ltd v Director of Liquor Licensing & Others*²⁰ when considering the suburb of Falcon, the Commission also observed that 'While acknowledging that a higher proportion of older people reside in Falcon than the State average, to suggest this inflated the unemployment rate is speculative.'
- 74 I would make a similar finding in respect of the present application. Accordingly, I do not accept the Applicant's submissions and consider that the evidence of the parties clearly establish that the locality experiences high rates of alcohol-related harm, with alcohol-related domestic assaults significantly above the State and metropolitan rates.
- 75 In my view, the grant of the application will increase the physical availability of liquor in the area and introduce consistently lower priced liquor into a community where risk factors are present, including higher PCC levels in Mandurah than the corresponding State rate, which the Second Intervenor submitted can be indicative of levels of alcohol-related harm

¹⁸ Compiled by the Department of Employment, with the unemployment rate derived from ABS statistics and Centrelink data

¹⁹ [LC 01/2016]

²⁰ [LC 23/2016]

occurring. Additionally, the Second Intervenor also raised concerns about harm and ill-health due to the availability of cheap liquor in the context of the Applicant's:

- (a) policy of '*consistently competitive pricing*' and '*special buys*' promotions; and
- (b) intention to sell both ALDI exclusive products and mainstream alcohol brands, which are available at many other packaged liquor outlets and sold at ALDI at frequently discounted prices and advertised as such.

76 In this regard, it was submitted that there are 22 wines varieties which are priced below \$5 and some as low as \$2.89; and mainstream beer is well below the price available from other outlets (Victoria Bitter 10pk at ALDI was offered at \$18.99 compared to a 6pk at Dan Murphy's for \$18.49.)

77 I consider that the grant of the application may put downward pressure on the price of packaged liquor in the area, which is particularly relevant given that the Applicant identified eight existing liquor stores and two relevant taverns that are already authorised to sell packaged liquor in the area.

78 According to the report by Deep End Services, ALDI Mandurah has a primary catchment area which contains the suburb of Mandurah. According to the evidence of the parties, the suburb of Mandurah experiences a high rate of social disadvantage, alcohol-related harm and elevated rates of crime and anti-social behaviour. Residents of this suburb are also identified by Deep End Services as comprising ALDI's '*local, inner area catchment for frequent customers*' and it is therefore likely that at-risk persons will be attracted to ALDI Mandurah and subsequently be exposed to the risk of unplanned or opportunistic purchases from the proposed liquor store, which '*will present a convenient option for shoppers to purchase liquor products with their grocery shopping and will generally provide for small 'top-up' purchases by shoppers in association with their regular grocery shopping.*' In my view, this eventuality is very likely due to the '*planned design and layout*' of the supermarket, which '*directs customers through the supermarket*', with '*Access to the liquor area... deliberately situated near the checkouts*', '*at the end of the walking route that will be taken by most ALDI customers through the supermarket, near the exit.*'

79 These conclusions are also supported by the comments of the SMCADS Coordinator, who states that in her professional opinion, as a clinical coordinator of the SMCADS, that:

- (a) clients from the catchment area for the proposed store work with the SMCADS team and a high proportion of clients seeking treatment in the SMCADS experience a low socio-economic status and a high level of unemployment;
- (b) SMCADS clients from Mandurah and surrounding suburbs demonstrate patterns of drinking reflective of both binge drinking and alcohol dependence;
- (c) Mandurah SMCADS clients are sensitive to the costs of living and have reported experiencing financial difficulties, which:
 - (i) is consistent with the high level of unemployment in the area; and

- (ii) means that clients make purchasing decisions based on their finances and are likely to be attracted to ALDI Mandurah because of the advertised low-priced grocery and household items;
- (d) alcohol-related issues are a key concern for clients coming from Mandurah and surrounding suburbs, with the majority of clients reporting packaged liquor as their main type of alcohol consumption;
- (e) various harm minimisation strategies are discussed with clients, including ways to manage triggers that lead to problematic drinking, which often includes the suggestion to avoid environments where liquor is readily available, sold or supplied, as an example, with counsellors often advising clients to complete their grocery shopping where they will not be exposed to the sale of packaged liquor;
- (f) the above strategy will be compromised by the operation a liquor store during the same trading hours of the supermarket and situated within the supermarket, as clients would be exposed to alcohol in the supermarket environment at a time when such a trigger would not otherwise have been a consideration;
- (g) the pricing of packaged liquor often influences purchasing destinations, which enables clients who are problematic or dependent drinkers to buy and consume more alcohol;
- (h) the grant of a liquor store licence to ALDI Mandurah would result in SMCADS clients, who often demonstrate low levels of self-worth and typically use alcohol to self-medicate, having greater access to low priced alcohol from 8 a.m. Monday to Saturday and not having to wait until standalone liquor stores open at a later time in the morning before purchasing and consuming liquor; and
- (i) clients have reported being influenced by the ease of access and cost of alcohol and given the low cost of liquor available within the ALDI supermarket, some clients would be triggered to purchase alcohol instead of food.

80 I also accept the representations of the Second Intervenor that there is a body of evidence that establishes a correlation between an increase in outlet density and an increase in alcohol related harm, as referred to in the materials submitted in support of the relevant intervention. In arriving at this view, I am aware that research evidence must be considered with regard to the proven circumstances of the particular locality in which the licensed premises is to operate, as stated by Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors*²¹ and Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor*²² (having quoted Wheeler J in Lily Creek):

“...by its very nature, much evidence about harm minimisation will be general and expert in nature. It may be epidemiological or sociological, to name just two of the different disciplines which may be involved. It will not necessarily be evidence relating directly to the particular premises, neighbourhood or

²¹ [2001] WASCA 410

²² [2011] VSC 207

locality concerned. It may nonetheless be relevant and admissible, for it may, depending on the circumstance, assist in determining the likelihood that harm is occurring or will occur, the nature of that harm and what contribution can be made to minimising it. Such evidence may be especially important where it is connected by other evidence with the ‘particular local, social, demographic and geographic circumstances’ of the given case.”

- 81 In the alternative, the Applicant submitted that the ‘*close proximity of liquor stores within supermarkets is already approved and operating in Western Australia at many, many locations. There are 13 approved ALDI stores*’ and it does not automatically follow that the ALDI Mandurah liquor store will specifically contribute to harm, ill-health or crime statistics. The Applicant also stated that the concerns of the Second Intervenor ‘*are not supported by the evidence as to the experience in the eastern states in relation to ALDI’s 280+ liquor stores and the trend of the authorities to continue to grant them*’ and the ‘*problems speculated as being inevitable negative consequences have clearly not eventuated in jurisdictions where the very same liquor store model has been operating throughout other Australian communities for many years.*’
- 82 It is unfortunate that the Applicant’s submissions in respect of the approach adopted in the eastern states did not disclose that some of the Applicant’s applications in New South Wales have been refused because of concerns about the potential negative impact that the operation of the ALDI liquor store may have on the local community, as has been previously noted by the licensing authority.
- 83 Further, while comparisons may have some utility, the Liquor Commission has previously found that ‘*it is the actual level of harm or ill-health in the relevant locality that is of significance.*’²³
- 84 It is also relevant to note, as observed by Deep End Services report, that the Applicant clearly has a commercial interest in achieving the grant of the licence because it ‘*will help ALDI maintain an equal and competitive position against the major supermarkets.*’ In this regard ... the Applicant’s private commercial interests may not coincide with the public interest contemplated by the Act.
- 85 The Applicant also lead evidence regarding the findings of the Liquor Commission in *ALDI Foods Pty Ltd v Director of Liquor Licensing & Others*²⁴, particularly where the Commission noted the concerns of the Intervenor regarding the integration of alcohol and grocery items but was of the view that those concerns could be mitigated through the imposition of appropriate conditions on the licence. However, I cannot reach the same conclusion given that:
- (a) the Liquor Commission found that the existing levels of harm and ill-health in the Harrisdale locality were no higher than other areas of the State; and

²³ Refer *Kununurra Liquor Pty Ltd v Executive Director of Public Health & Others* (LC 09/2016) and *Woolworths Ltd v Executive Director of Public Health and Others* (LC 02/2017)

²⁴ LC 09/2017

- (b) the facts and circumstances of this case are sufficiently different, with the evidence establishing that the locality surrounding ALDI Mandurah experiences disadvantage with at-risk persons requiring alcohol and drug treatment services, high rates of alcohol-related domestic assaults, together with other alcohol-related anti-social behaviour and harm.

86 It should also be borne in mind that the harm contemplated by the Act is not confined to consumers of alcohol and extends to harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm. This includes harm which may occur through an increase in anti-social or injurious behaviour due to the use of liquor and is not limited to physical harm.²⁵

87 Consistent with the observations of Edelman J in *Liquorland (Australia) v Executive Director of Public Health*²⁶, I note that in circumstances where there is already a high level of alcohol-related harm in the community, even the smallest risk of a further increase may be considered unacceptable:

‘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.’

88 Further, in *McKinnon v Secretary, Department of Treasury*²⁷, 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... and its content will depend on each particular set of circumstances.’

89 In this case I consider:

- (a) that the Act’s object of minimising harm or ill-health to people or any group of people due to the use of liquor and providing for the welfare of the local community outweighs the object of catering for the requirements for liquor and related services; and
- (b) the Applicant’s assertions about the socio-economic status of the locality is not borne out by the evidence; and
- (c) the risk of an increase in harm and ill-health due to the use of liquor associated with the granting of the application are simply too great when weighed against the

²⁵ Refer *Re Gull Liquor, Gingers’ Roadhouse Upper Swan* (1999) 20 SR (WA) 321 and Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207

²⁶ [2013] WASC 51

²⁷ [2005] FCAFC 142

positive aspects of the application, which is primarily concerned with the benefits of convenience shopping and a small range of specialty brands of liquor products.

- 90 Further, as noted by the Liquor Commission²⁸, the licensing authority is entitled to draw inferences from evidence and notorious facts. In this instance, the academic literature in respect to the effects of outlet density, anecdotal evidence of the Coordinator SMCADS and the increase in competition that would result in the granting of the licence are a sufficient basis to draw a logical conclusion that there is a significant likelihood that the granting of the licence will result in an increase in harm and ill-health to those who use liquor in a community where there is already a significant level of such harm and ill-health.
- 91 Therefore, when I consider all the information before me, I have concluded that it is highly likely, on the balance of probability, that the grant of the application will, in due course, contribute to the high rate of alcohol-related harm that presently exists in the locality. I do not share the view of the Applicant that the low risk features of its proposal will sufficiently mitigate the potential risks to this community, given that the harm caused by packaged liquor occurs away from the licensed premises and in circumstances beyond the Applicant's control.
- 92 When regard is had to the totality of the evidence, I am not satisfied on balance that the Applicant has discharged its onus under section 38(2) of the Act that the granting of the licence is in the public interest.
- 93 Accordingly, the application is refused.
- 94 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.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

²⁸ Refer *Woolworths Ltd v Executive Director of Public Health and Others* (LC 02/2017)