

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: RILOCH PTY LTD (REPRESENTED BY ROBERSTON HAYLES LAWYERS)

OTHER PARTIES: CHIEF HEALTH OFFICER (INTERVENOR)

COMMISSIONER OF POLICE (OBJECTOR)

JULIE STAFFORD ON BEHALF OF THE MCCUSKER CENTRE FOR ACTION ON ALCOHOL AND YOUTH (OBJECTOR)

TARLKA MATUWA PIARKU ABORIGINAL CORPORATION RNTBC (OBJECTOR)

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

APPLICATION REF: A773077498

PREMISES: WILUNA TRADERS
37 WOTTON STREET, WILUNA

DECISION OF: BRETT SNELL
DEPUTY DIRECTOR LIQUOR CONTROL & ARBITRATION

DATE OF NOTICE OF DECISION: 8 MARCH 2019

DATE OF REASONS: 14 JUNE 2019

Introduction

1. On 26 March 2018, an application was made to the Director of Liquor Licensing (the Director) by Riloch Pty Ltd (the Applicant) for the conditional grant of a liquor store licence for premises to be known as *Wiluna Traders* and situated at 37 Wotton Street, Wiluna.
2. The application, which was made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* ("the Act"), was advertised in accordance with instructions issued by the Director, which resulted in the lodgement of the notices of objection, pursuant to s 73 of the Act by:
 - (a) the Commissioner of Police (the First Objector);
 - (b) Julie Stafford on behalf of the McCusker Centre for Action on Alcohol and Youth (the Second Objector); and
 - (c) Tarlka Matuwa Piarku Aboriginal Corporation RNTBC (the Third Objector).
3. A notice of intervention, pursuant to s 69 of the Act, was also lodged by the Chief Health Officer (the Intervenor).

4. On 8 March 2019, pursuant to the provisions of ss 13 and 16 of the Act, the application was determined on the written submissions of the parties and I published a notice of decision, pursuant to s 18AA of the Act, in which the application was refused.
5. In correspondence dated 11 March 2019, the Applicant requested written reasons for the notice, in accordance with s 18AA(4) of the Act. Accordingly, my reasons for refusing the application follow.
6. 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. Further, the fact that I have not referred to any specific piece of evidence in these written reasons does not mean I have not considered it.

Background and issues raised in the application

7. It was common ground between the parties that Wiluna has long experienced elevated levels of alcohol-related harm and been the subject of both voluntary and mandated restrictions on the sale of alcohol. For many years, the *Club Hotel* was the sole licensed premises in Wiluna, until the licence was surrendered on 30 August 2017. Following the closure of the *Club Hotel*, there is no other licensed premises in Wiluna.
8. As far as I have been able to determine, based on information obtained from the Director's records and provided by the parties, the following is a brief history of alcohol-related issues in Wiluna:
 - (a) back in the early 1970s when Aboriginal people were allowed to drink in the hotel in Wiluna, problems arose with drunkenness and the Elders on behalf of the Martu People (Wiluna People), made an agreement (the Agreement) with the licensee and the local police, which provided:
 - (i) that the hotel would only sell beer and not wine and spirits, since the Wiluna People could not handle hard liquor like wine and spirits;
 - (ii) that packaged liquor would only be sold in restricted hours, being initially between 2 p.m. and 7 p.m.; and
 - (iii) at law business time or when funerals were on, that packaged liquor sales would be restricted to low alcohol beer only;
 - (b) at the beginning of the Agreement, beer was able to be sold in bottles, but this led to bottles getting broken in fights and people being injured; which resulted in the Agreement being amended to specify that beer could only be sold in cans;
 - (c) in November 2007, as a consequence of concerns raised by the Shire of Wiluna about the extent of alcohol-related harm in Wiluna, the Director instigated an inquiry, pursuant to section 64 of the Act, to consider whether it was in the public interest to further restrict the sale and supply of liquor in Wiluna;
 - (d) as part of that inquiry, comment was sought from a range of stakeholders, including parties to these proceedings, i.e. the Intervenor and First Objector;

- (e) the information contained in the Intervenor's s 64 submission to the Director in 2008 demonstrated that alcohol-related issues in the community were of concern, including high levels of family violence, physical and sexual assault, street drinking and anti-social behaviour, child neglect and loss of culture;
- (f) in May 2008, the Director determined it was in the public interest to impose conditions on the hotel licence to restrict the sale of packaged liquor to address the extent of alcohol-related harm in the community, which included:
 - (i) limited trading hours for the sale of packaged liquor (3 p.m. to 6 p.m.);
 - (i) only permitting beer in cans to be sold as packaged liquor (limited to one carton per person, per transaction);
 - (ii) restricting the sale of liquor on Sundays to low and mid-strength alcohol only (both packaged liquor and on-premises);
 - (iii) initiating alcohol-free days on Thursdays; and
 - (iv) specifying that the sale of liquor sold for consumption on-premises must be ancillary to food;
- (g) in 2013, a further review of the conditions was undertaken by the Director to ascertain their on-going effectiveness and appropriateness, with the Intervenor also making submissions to that review, which showed that:
 - (i) in the 12 months following the imposition of restrictions in 2008, there was a reduction in levels of alcohol-related domestic and non-domestic assault;
 - (ii) while alcohol-related violence increased slightly from 2008 to 2011, alcohol-related assaults and domestic violence remained lower than the pre-restriction period; and
 - (iii) people were travelling to nearby towns to purchase alcohol and online purchasing from *Dan Murphy's* in attempt to circumvent the liquor restrictions;
- (h) as a result of the 2013 review, the conditions imposed on the *Club Hotel* licence were revised and, effective 1 February 2015, to provide that:
 - (i) only the following liquor could be sold as packaged liquor:
 - (1) beer in cans, limited to one carton (30 cans) per person per day; or
 - (2) wine, limited to one bottle per person per day; or
 - (3) low strength pre-mixed spirits (3.5% ethanol or less) in cans, limited to six cans per person per day;
 - (ii) only low strength liquor (3.5% ethanol or less) was permitted to be sold on Thursday, Friday and Sunday (either as packaged liquor or liquor sold for consumption on the premises);

- (iii) the sale of liquor on credit was prohibited except to lodgers, with all other liquor being required to be paid for at the time of purchase;
- (iv) the licensee was prohibited from retaining a person's key card or credit card;
- (v) juveniles were prohibited from the licensed premises before 3.30 p.m. each week day and after 6 p.m. each day, although they were permitted on the licensed premises at any time to have a meal; as a lodger or when accompanied and supervised by a responsible adult;
- (vi) a prohibition on packaged liquor being held by the licensee for collection before or after the approved hours for the sale of packaged liquor; and
- (vii) the restrictions pertaining to quantity, alcohol content and the time that alcohol was available, did not apply to *bona fide* tourists passing through town who were purchasing packaged liquor for consumption out of town or to mine site operators, pastoralists or other persons conducting business out of town who were purchasing packaged liquor for consumption out of town and have registered with the licensee and that list being endorsed by the local people.

The application

9. Pursuant to s 38(1)(a) of the Act and r 9EA of the *Liquor Control Regulations* 1989, an application for the grant of a liquor store licence is a prescribed application for the purposes of s 38(2) of the Act. Accordingly, the application was supported by a Public Interest Assessment (PIA).
10. According to the Applicant's PIA:

'Since the closure of the Wiluna Club Hotel, there is no other packaged liquor outlet in the Shire of Wiluna which means that both the general public and tourists passing through the town do not have reasonable access to packaged liquor. We wish to offer packaged liquor to both the local community and to tourists as a complimentary service to our existing services as a supermarket/convenience store, petrol station, post office and hardware outlet.'
11. The Applicant's PIA proposed that the liquor store would operate from 9 a.m. to 5 p.m. Monday to Saturday and that it would offer a 'modest range of chilled package liquor of approximately 100 lines, refreshments and ice', although the proposed trading hours were subsequently reduced in the Applicant's subsequent submissions.
12. The PIA explained that the closest liquor suppliers are located more than 200 km away, in Leinster, Sandstone and Meekatharra and also noted, by way of its experience as the operator of Wiluna's *Australia Post* outlet, that there are extensive on-line purchases of liquor delivered into Wiluna, predominantly by fly-in fly-out workers and remote pastoralists. The Applicant also submitted, based on its interpretation of the high number of money transfers facilitated by its *Australia Post* service, that there is an uncontrolled transportation and distribution of large quantities of liquor taking place in Wiluna 'that on occasions is extraordinary for a country town.'

13. The Applicant submitted the following benefits associated with the granting of the licence:
- (a) ease of purchasing and convenience;
 - (b) competitive pricing (give that *Wiluna Traders* will have to compete with the attractive price schedule of *Dan Murphy's* and other on-line competitors);
 - (c) less binge drinking and antisocial behaviour;
 - (d) the capacity to meet market expectations;
 - (e) the lowering of:
 - (i) the cost of living through eliminating the risk of long distance travel to purchase alcohol; and
 - (ii) the risk of re-sale of liquor by persons to members of the community.
14. The Applicant also submitted that 'It is our opinion that a packaged liquor licence granted in Wiluna to an existing and well-regulated store will offer better control... minimising the risk and disadvantage to residents.' The Applicant also suggested that a liquor standing committee be formed in the community to liaise with relevant authorities to identify problem drinkers causing harm and anti-social behaviour, limit supply and close the proposed premises for the duration of cultural events, such as funeral gatherings, sporting events, NAIDOC Week, Christmas, Easter and public holidays.
15. The Applicant's PIA also provided information on the surrounding locality and generally addressed those matters prescribed in ss 5 and 38(4) of the Act. In this regard, it was acknowledged that Wiluna has a predominant Aboriginal population and that Aboriginal people and communities are included as an 'at risk' group, vulnerable to the impact of alcohol¹.
16. Further, the Applicant's PIA also noted that the *WA Alcohol and Drug Interagency Strategy* acknowledged that:
- (a) Aboriginal people experience a disproportionate amount of harms and high access rates to treatment from alcohol and other drug use;
 - (b) the disparity in health and life expectancy between Aboriginal people and non-Aboriginal Australians is significantly impacted by drug related problems; and
 - (c) the harmful use of alcohol and drugs can be seen as a direct result of the disadvantages Aboriginal people face and is often exacerbated by broader underlying social, economic and health issues; and
 - (d) Aboriginal people can be susceptible to alcohol and other drug problems as a result of cultural deprivation and disconnection to cultural values and traditions, trauma poverty, discrimination and lack of adequate access to services.

¹ Refer *Drug and Alcohol Interagency Framework for Western Australia 2011-2015*, as referenced in the Director's *Public Interest Assessment* policy

17. The following statistics relating to alcohol-related harm were lodged by the Applicant:
 - (a) in 2011/12 the estimated per capita pure alcohol consumption in regional areas (12.21) was similar to the State-wide average per capita alcohol consumption (11.491);
 - (b) in 2011-2015 the rate of alcohol-related hospitalisations for males was significantly higher in remote areas (800.8 per 100,000) compared with rural (533.8 per 100,000) and metro areas (536.7 per 100,000);
 - (c) in 2011-2015 the rate of alcohol-related hospitalisations for females was significantly higher in remote areas (1178.6 per 100,000) compared with rural (579.5 per 100,000) and metro areas (536.7 per 100,000); and
 - (d) in 2016, alcohol was one of the main drugs of concern for those seeking treatment at State Government funded treatment services in regional areas (31.3%).
18. Reference was also made by the Applicant to the 2006 data derived from the Socio-Economic Indexes of Areas (SEIFA) released by the Australian Bureau of Statistics, which noted that Wiluna had a ranking of 718. Crime statistics for Wiluna for the period of July 2015 until June 2017 were also presented in the PIA for crimes such as assault, burglary (dwelling), burglary (other), graffiti, robbery and steal motor vehicle.
19. The Applicant acknowledged that the 'Wiluna Shire would identify itself as an "at-risk" area given the social economic fabric and status of the community' and submitted that that it therefore proposed ample signage and marketing material to promote responsible drinking.
20. To further address the characteristics of the locality, the Applicant submitted that it proposed to:
 - (a) adopt restricted alcohol sales days i.e. align Centrelink payments to restricted alcohol days and no liquor sales on Sundays;
 - (b) restrict cheap alcohol products for sale such as cask wine, fortified sweet wine and discount spirits;
 - (c) restrict glass packaged liquor products;
 - (d) restrict the maximum quantity of alcohol that any one person can purchase;
 - (e) prohibit the sale of liquor on credit;
 - (f) prohibit the licensee from retaining a person's key card or credit card;
 - (g) prohibit unaccompanied juveniles being permitted into the licensed area; and
 - (h) prohibiting liquor being held by the licensee for collection before or after the permitted hours for the sale of packaged liquor.
21. In response to possible negative impacts associated with the grant of the application on Aboriginal people living in and around Wiluna, the Applicant:

- (a) noted the work of the Ngangganawili Aboriginal Health Service (NAHS) in forming prevention strategies for foetal alcohol spectrum disorders;
- (b) submitted that it would not sell liquor on Sundays, due to it being a traditional family day in Wiluna, where many people go hunting and exploring; and
- (c) submitted that while communities such as Wiluna generally have limited access to infrastructure and services, Wiluna is supported by a modern and high functioning hospital and health service.

22. The Applicant also acknowledged that:

- (a) the potential impact of the proposed premises on anti-social activities in the locality was high if the proposed store is not well managed;
- (b) street drinking is a major concern, although it would not be tolerated within the confines of the liquor store or any other area reasonably under the control of the Applicant;
- (c) Wiluna has a high offender or incarceration number in relation to domestic violence and alcohol-related offences, with the Applicant submitting that it will adopt a zero tolerance approach to street violence or abuse to other customers and/or staff and would offer support or encouragement by alerting family members, community leaders, the police etc. if it was felt that a particular customer was at risk; and
- (d) the risk of vandalism, litter and other criminal acts was high, given Wiluna's past experience when the *Club Hotel* was trading, although the Applicant submitted that the problems associated with the *Club Hotel* 'arose because of its dual function as a tavern where people would drink on site.'

23. In further submissions, the Applicant proposed the following quantity restrictions:

- (a) one carton pack per person of full strength beer per trading day (no glass); or
- (b) one carton of pre-mixed spirit per person per trading day (no glass),

with wine and spirits only being sold to *bona fide* travellers, pastoral stations and the resource sector, with *bona fide* tourists also being exempt from any daily quantity restrictions.

24. Additionally, in relation to the lack of tourism data to support its claims regarding catering to the requirements of tourists, the Applicant submitted that:

'...there is no hard data available from the Tourism WA nor the local council on tourist numbers. However, there are ongoing efforts to open up the interior of Western Australia to tourism and Wiluna is at the start of the Gunbarrell Highway and the Canning Stock Route, and is seeing increased tourism traffic. Wiluna is also within proximity of the upgraded "Outback Way" sealed highway that will bring more visitors to the region. We submit that being able to provide a limited amount of packaged liquor will meet the legitimate expectations of tourists.'

25. Appended to the PIA was an article from ABC on-line, in which it was reported that the town's alcohol-related problems, primarily domestic violence, have worsened since the *Club Hotel* closed. Additionally, the application was also accompanied by letters of support from the Chief Executive Officers of the Shires of Wiluna, Sandstone and Leonora and an email from the CEO of the Liquor Stores Association of Western Australia.

The representations of the Intervenor

26. The Intervenor made representations, based on supporting evidence and literature, as well as information provided by stakeholders and community members² that since the closure of the *Club Hotel* there has been a change in the types of liquor being consumed in the community. In this regard, it was submitted that it was previously understood that the common drink of choice was low-strength spirits and cans of Emu Export, whereas the community is now purchasing alcohol in nearby towns where they have unrestricted access to alcohol. This view was supported by the experience of the Emergency Capacity Manager and Community Paramedic (Paramedic) at NAHS, who stated that:

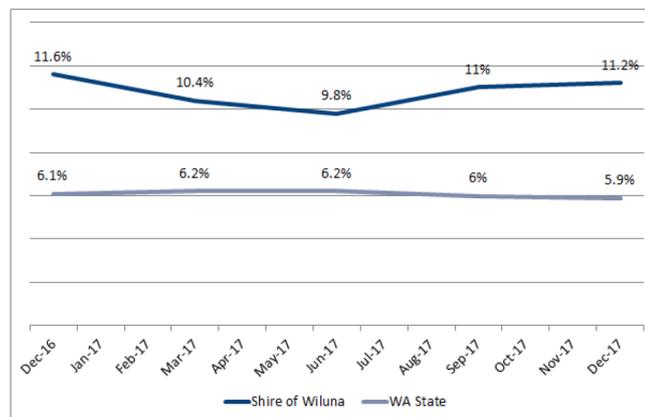
'The community are drinking different, heavier types of alcohol now. It is common to see 750mL bottles of Jack Daniels, bottles of wine and beer stubbies on the side of the road or smashed on the ground – I never saw this when the pub was open. I see people swigging from bottles of straight spirits.'

27. Further, while noting the Applicant's assertion that the grant of the licence will benefit the community by eliminating the need to drive long distances to purchase alcohol, the Intervenor noted a lack of any evidence to support this claim (or alternatively that funds currently being spent on fuel and car maintenance would not be spent on purchasing additional alcohol.) The Intervenor also submitted that the Applicant's submissions in respect of this matter are diminished by documented reports of financial and related social issues associated with money being spent in Wiluna on alcohol, rather than other basic necessities when the *Club Hotel* was operating. Based on feedback received from local stakeholders, the Intervenor submitted that these issues remain relevant and therefore sought to refute the Applicant's claim that the grant of the licence would benefit the community.
28. Based on the 2016 Census data, the Intervenor submitted there are approximately 720 residents in Wiluna and of those, Aboriginal and Torres Strait Islander people comprise approximately 30%. The Intervenor also submitted there is strong evidence linking alcohol use to poor physical and mental health among Aboriginal people and communities.³ Accordingly, the Intervenor submitted that the Wiluna township could be considered an at-risk community for alcohol-related harm, with a complex mix of risk factors that increase the potential for alcohol-related harm and ill-health, a fact that was even acknowledged by the Applicant.

² Provided to a representative of the Chief Health Officer, who visited the Wiluna community on May 2018

³ Gray, D., Cartwright, K., Sterne, A., Siggers, S., Wilkes, E., & Wilson, M. (2017). *Review of the harmful use of alcohol among Aboriginal and Torres Strait Islander people*. Australian Indigenous HealthInfoNet. P.2

29. It was also submitted that Aboriginal people are more likely to experience harms associated with the consumption of alcohol, with reference to a publication by Gray *et al*⁴, to show that:
- (a) for the period 2010-2014, Aboriginal males and females died from conditions solely caused by alcohol more frequently than non-Aboriginal males and females (4.7 and 6.1 times respectively);
 - (b) the overall rate of suicide among Aboriginal people was 2.1 times higher than among non-Aboriginal people and for the period 2011-2015, with 40% of male suicides and 30% of female suicides attributable to alcohol use;
 - (c) the rate of hospitalisation for Aboriginal people is significantly higher than non-Aboriginal people, for example in the years 2012/13, 2013/14 and 2014/15, 37.8%, 36.5% and 46.0% of hospitalisations for assault were related to family violence; and
 - (d) in 2011, alcohol accounted for an estimated 8.3% of the overall burden of disease among Aboriginal people; a rate that was 2.3 times higher than that among non-Aboriginal people.
30. According to the Intervenor, analysis of the most recent SEIFA data establishes that the Shire of Wiluna is the fourth most disadvantaged Local Government Area (LGA) in Western Australia and that the suburb of Wiluna is one of the most disadvantaged suburbs, being ranked 29th in the State and falling within the bottom two percent.
31. The Intervenor submitted that increased availability of alcohol may disproportionately impact vulnerable, at-risk members of the community, where drinking behaviours and socio-economic circumstances influence one another. This view was supported by an employee of the NAHS, who stated that in the absence of employment or other recreational activities in the town, many community members have been observed to 'drink all day'
32. The Intervenor further submitted that unemployment in the Shire of Wiluna is consistently higher than the State rate, as demonstrated by the following graph, which compares the unemployment rates in the Shire of Wiluna and the State from December 2016 to December 2017:



⁴ Gray, D., Cartwright, K., Sterne, A., Siggers, S., Wilkes, E., & Wilson, M. (2017). *Review of the harmful use of alcohol among Aboriginal and Torres Strait Islander people*. Australian Indigenous HealthInfoNet. P.2

33. The Intervenor also submitted that evidence suggests that at-risk groups are more sensitive to features such as the price of alcohol, which, in turn, can influence the amount of alcohol consumed and related harm. In this regard, the Intervenor cited an Australian study⁵ by Livingston *et al*, which observed that ‘...socially marginalised drinkers are more likely to be influenced by changes in alcohol availability than other drinkers’ and that this ‘implies that changes to outlet density could markedly affect the consumption and long-term health problems of some population subgroups...’
34. Therefore, the Intervenor submitted that it is reasonable to consider that the introduction of a packaged liquor outlet within the Wiluna community is likely to increase the pressure on individuals who are already experiencing the negative effects of emotional, physical and financial hardship.
35. The Intervenor also submitted that according to local stakeholders, people in the Wiluna community experience mental health issues, including self-harm and attempted suicide, which, in their experience, are almost always associated with alcohol. It was further submitted that it is widely recognised⁶ that alcohol plays a complex role in the development and progression of mental health outcomes and that its use elevates the risk of several mental health problems and self-harm.
36. Further, the Intervenor submitted that:
- (a) suicidal thoughts may be more likely during intense drinking sessions, given that alcohol use to the point of intoxication commonly precedes attempted suicide and suicide, and the acute risk of suicidal behaviour is increased with higher levels of consumption⁷;
 - (b) the immediate disinhibiting effects of alcohol can facilitate ideas and increase the likelihood of suicidal thoughts being put into action, often impulsively⁸; and
 - (c) alcohol intoxication has been found to trigger self-harm and suicide, not only due to increased impulsivity, but also by initiating depressive thoughts and removing barriers that inhibit a person’s actions to self-harm.⁹
37. This view was reflected in the experience of the Medical Director at NAHS, who stated that:
- ‘In my professional experience, people in the community who threaten to harm themselves in this manner are usually intoxicated. These acts are often impulsive and a result of arguments fuelled by alcohol. Despite the lack of a formal

⁵ Livingston, M., Chikritzhs, T. & Room, R. (2007). Changing the density of alcohol outlets to reduce alcohol-related problems. *Drug and Alcohol Review*, 26(5). P.563

⁶ Ness, J. (2017). Alcohol misuse and self-harm: An opportunity for early intervention in emergency department. *The Lancet*, 4, 435-436

⁷ Conner, K., Li, Y., Meldrum, S., Duberstein, P., & Conwell, Y. (2003). The role of drinking in suicidal ideation: Analyses of project MATCH data. *Journal Studies on Alcohol*, 64(3), 402-408

⁸ Sher, L. (2006). Alcohol consumption and suicide. *QJM: An International Journal of Medicine*, 99, 57-61. P.59

⁹ Pompili, M., Serafini, G., Innamorati, M., & Lester, D. (2010). Suicidal behaviour and alcohol abuse. *International Journal of Environmental Research and Public Health*, 7, 1392 – 1431. P.1404

psychiatric disorder, people drinking who develop suicidal thoughts are at high risk of death.’

38. Representations were also made about the impact of Foetal Alcohol Spectrum Disorder (FASD) on children within the locality, following concerns raised by health providers in Wiluna. In this regard, with the Medical Director of NAHS observed that:

‘Some other effects of alcohol are even more devastating than the direct, immediate effects. Based on the presentations I see at the clinic, one of my major concerns is the issue of foetal alcohol spectrum disorder (FASD), where alcohol in pregnancy causes foetal brain damage. While the most severely affected children with this disorder may be clinically recognised by particular facial features and obvious developmental delay, probably the majority of affected children may never be recognised. The effects are neuro-psychological and cause a variety of permanent adverse effects on behaviour, intellect, learning and socialisation. While the majority of pregnant women in the community understand it is not safe for the foetus to drink during pregnancy, the biggest issue is when they are drinking and unknowingly pregnant. I suspect many children in this community have some degree of FASD. I think the issue of FASD is one of the most significant issues for the future of this community.’

39. The Intervenor also noted that while FASD prevalence figures for Wiluna or the Mid-West Region were not available at the time of the intervention, research has found higher rates of FASD are reported among Aboriginal and Torres Strait Islander communities¹⁰, with the Western Australian FASD birth prevalence being reported to be 0.26 per 1,000 births, although it was significantly higher among Aboriginal children (4.08 per 1,000), compared to non-Aboriginal children (0.3 per 1,000).¹¹
40. In relation to alcohol-attributable hospitalisation data, the Intervenor submitted that the LGA is the smallest breakdown available for hospitalisation data and presented the relevant data for the Wiluna LGA, as shown in the following table¹²:

	2011-2015
All alcohol-attributable hospitalisations	1.38 ↑
Female	2.85 ↑
Male	0.91 ↔
Acute alcohol attributable hospitalisations	1.39 ↔
Chronic alcohol-attributable hospitalisations	1.38 ↔
↑ indicates the rate is statistically significantly higher than the State rate	
↔ indicates the rate is statistically similar to the State rate	

¹⁰ Burns, L., Breen, C., Bower, C., O’Leary, C., & Elliot, E.J. (2013). Counting fetal alcohol spectrum disorder in Australia: The evidence and the challenges. *Drug and Alcohol Review*, 32, 461 – 467

¹¹ Western Australian Primary Health Alliance. (2015). Midwest – population and health snapshot. Retrieved from: <http://www.wapha.org.au/wp-content/uploads/2015/12/Regional-Profile-2016-Midwest-population-and-health-snapshot-FINAL.pdf>

¹² Comprising of presentations to any public hospital in Western Australia by Wiluna LGA residents, with relevant health data is derived from the *Alcohol-Attributable Hospitalisation Data* report prepared by Department of Health, Epidemiology Branch, unpublished 2018

41. Based on the available data and anecdotal information obtained from local health service providers, the Intervenor submitted 'it is apparent the community has a history of drinking in a harmful manner that has an impact on short and long-term health conditions and diseases.' Accordingly, the Intervenor also submitted details of:
- (a) alcohol-attributable hospitalisation data – 2006 to 2010, where:
 - (i) the rate of all alcohol-attributable hospitalisations for all persons residing in the Wiluna LGA was significantly higher (1.58 times) than the corresponding State rate;
 - (ii) the rate of all alcohol-attributable hospitalisations for female residents of the Wiluna LGA was significantly higher (2.67 times) than the corresponding State rate;
 - (iii) the rate of all alcohol-attributable hospitalisations for male residents of the Wiluna LGA were similar to the State;
 - (iv) acute alcohol-attributable conditions comprised the majority of alcohol-related presentations (approximately 73.6%) and this rate was significantly higher (2.02 times) than the corresponding State rate; and
 - (v) the rate of alcohol-attributable hospitalisations due to chronic conditions for Wiluna LGA residents was similar to the State; and
 - (b) alcohol-attributable hospitalisation data – 2011 to 2015, where:
 - (i) the rate of all alcohol-attributable hospitalisations for all persons residing in the Wiluna LGA was significantly higher (1.38 times) than the corresponding State rate;
 - (ii) the rate of all alcohol-attributable hospitalisations for female residents of the Wiluna LGA was significantly higher (2.85 times) than the corresponding State rate;
 - (iii) the rate of all alcohol-attributable hospitalisations for male residents of Wiluna LGA remained similar to the State; and
 - (iv) the rate of alcohol-attributable hospitalisations due to chronic conditions for Wiluna LGA male and female residents was similar to the State.
42. Concerns were also expressed about Applicant's intention to offer products in Wiluna at comparable prices to those offered by *Dan Murphy's*, which advertises low pricing and a commitment to a 'lowest price guarantee' as core business features, given that research has consistently demonstrated that the economic cost of alcohol is a driving factor that influences purchasing decisions, consumption and alcohol-related harm.
43. In response to the Applicant's assertion that the grant of the application will 'offer better liquor control', the Intervenor noted that consumption and harms associated with packaged liquor:

- (a) often occur away from the licensed premises;
- (b) at a later time and place; and
- (c) in private, uncontrolled environments,

irrespective of a licensee's ability to maintain and adhere to regulatory requirements at the point of sale. Additionally, the Intervenor also referenced National and international literature, to demonstrate a strong association between the availability of packaged liquor and the nature and extent of alcohol-related harm.

44. Reference was also made by the Intervenor to a publication by Livingston¹³, which found that the availability of packaged liquor is associated with increased rates of a range of harms which occur away from licensed premises, including, but not limited to:
- (a) domestic and family violence;
 - (b) assaultive violence;
 - (c) child maltreatment;
 - (d) vehicle accidents;
 - (e) breath alcohol levels of drink drivers;
 - (f) alcohol-attributable hospitalisations; and
 - (g) injuries amongst young adults.
45. Further, the Intervenor also noted that a Western Australian study found that for every additional 10,000 litres of pure alcohol sold from a packaged liquor outlet, the risk of violence increased by up to 27%.¹⁴
46. Accordingly, the Intervenor submitted that while the grant of the application may reduce the frequency of some people travelling to other towns to access alcohol, there is little merit to the Applicant's claim a liquor store in Wiluna will offer better liquor control than currently exists in the community.
47. In response to the Applicant's submissions regarding Wiluna being supported by a modern and high functioning hospital and health service, the Intervenor submitted that NAHS is a non-admission facility, which delivers more than 10,000 episodes of health care per annum to up to 4,000 Indigenous and non-Indigenous clients. Persons who require treatment that is not available in Wiluna or that require on-going monitoring are transferred via the Royal Flying Doctor Service to tertiary hospital facilities in Perth.
48. Appended to the Notice of Intervention was:
- (a) a statement by Wade Bloffwitch, Emergency Capacity Manager and Paramedic, NAHS;

¹³ Livingston, M. (2013). To reduce alcohol-related harm we need to look beyond pubs and nightclubs. *Drug and Alcohol Review*, 32(2), 113 – 114. P. 113

¹⁴ Liang, W., & Chiktrizhs, T. (2011). Revealing the link between licensed outlets and violence: Counting venues verses measuring alcohol availability. *Drug and Alcohol Review*, 30, 524-535

- (b) a Personal Communication by Dr Toby McLeay, Medical Director, NAHS, 28 May 2018;
- (c) a Personal Communication by an NAHS Employee, dated 29 May 2018; and
- (d) an estimated number and rates of alcohol-attributable hospitalisations, Wiluna LGA for the years 2006-2010 and 2011-2015,

which were referenced in the Intervenor's submissions.

The Objection by the First Objector

49. The objection by the First Objector was premised on the grounds that the grant of the application would:
- (a) not be in the public interest (s 74(1)(a) of the Act), given that the Applicant's public interest claims were not supported by evidence; and
 - (b) pose unacceptable risks of harm or ill-health to people, or any group of people, due to the use of liquor (s 74(1)(b) of the Act).
50. The First Objector further observed that the Applicant had failed, despite a letter of support by the Liquor Stores Association of WA, to provide any evidence to demonstrate a real and demonstrable consumer requirement for liquor products and services sought to justify granting a liquor store licence (i.e. the Applicant did not provide any consumer surveys, petitions or surveys from the intended 'target client base', being tourists or the local community.)
51. The First Objector further submitted that it is 'indisputable' that there are numerous 'at-risk' groups in the locality and that this fact was acknowledged by the Applicant in its PIA and despite the obvious levels of harm and potential risks associated with the grant of the application, the Applicant had failed to address those risks in any meaningful way, i.e. the issue of street drinking is beyond the scope of the Applicant to prevent and enforce, as are the incidence of domestic violence or other criminal offending, given that the Applicant cannot control the use of alcohol past the point of sale. Further, many of the Applicant's other suggested strategies, such as establishing a liquor accord in Wiluna, requires input from other agencies external to the Applicant.
52. The First Objector also noted the Applicant's use of outdated SEIFA and Census data and submitted that more up to date data from 2016 provide probative and objective evidence of a town that is significantly disadvantaged and over represented by an 'at risk' group in a remote community.
53. The First Objector referenced the 2016 *The National Drug Law Enforcement Research Fund*¹⁵ (NDLERF) report into off-site outlets and alcohol-related harm, which concluded that 'off-site alcohol sales and total volume alcohol sales within a region are important predictors of assault' and that 'there is strong international evidence for a specific

¹⁵ W. Gilmore et al, 'Off-site outlets and alcohol related harm' Monograph Series No. 56 (2015) National Drug Law Enforcement Research Fund

association between off site outlet density and violence', before submitting that increases in alcohol sales within are community are more likely to exacerbate rather than ameliorate harms associated with alcohol.

54. The First Objector also submitted that it has a broad knowledge of the current issues relating to crime in the locality and presented crime data, obtained from police databases and prepared specifically for the objection.
55. According to the First Objector, the following tables provide an analysis of recorded crime data at the rate per 1,000 persons, with comparative data for elsewhere in WA, based on data derived from the 2011 and 2016 ABS Census and broken down into alcohol and non-alcohol related crimes (with the letter 'Y' indicating the presence of alcohol in the crime and the letter 'N' indicating that alcohol was not a contributing factor):

RP 1000	2014		2015		2016		2017		Total
	N	Y	N	Y	N	Y	N	Y	
Wiluna									
All Offences	219.47	134.49	184.26	153.11	126.30	126.30	96.02	76.99	762.98

RP 1000	2014		2015		2016		2017		Total
	N	Y	N	Y	N	Y	N	Y	
Metro									
All Offences	108.89	5.40	124.52	5.52	124.65	5.66	116.42	5.32	382.09

RP 1000	2014		2015		2016		2017		Total
	N	Y	N	Y	N	Y	N	Y	
Regional									
All Offences	125.89	19.08	140.53	18.24	145.61	19.90	134.15	21.75	480.18

RP 1000	2014		2015		2016		2017		Total
	N	Y	N	Y	N	Y	N	Y	
Wiluna									
Domestic Violence	17.33	83.33	44.12	74.39	25.09	45.85	18.17		43.25

RP 1000	2014		2015		2016		2017		Total
	N	Y	N	Y	N	Y	N	Y	
Metro									
Domestic Violence	8.13	2.44	11.14	2.67	13.57	2.74	11.40		2.35

RP 1000	2014		2015		2016		2017		Total
	N	Y	N	Y	N	Y	N	Y	
Regional									
Domestic Violence	10.98	9.76	13.38	9.95	18.73	11.37	15.30		12.93

56. In view of this information, the First Objector submitted that the above data conclusively reveals that Wiluna is a locality that is significantly impacted by high levels of alcohol related harm, with crime data for all offences in the locality (at rates per 1000) showing that alcohol was a contributing factor in 50% or higher in all offences from 2015-2017 and that these figures are significantly higher than the metropolitan and regional rates.
57. In relation to offences for domestic violence, the First Objector submitted that crime data from 2014 to 2017 shows that the contribution of alcohol is consistently high and concerning and that it is 'obvious from the data that alcohol "dominates" domestic violence incidents. When compared against the metropolitan and regional rates, the locality suffers from domestic violence (both alcohol and non-alcohol related) at a completely disproportionate rate.'

58. In conclusion, the First Objector submitted that the Applicant seeks the grant of a liquor store licence in a locality with complex issues of social, economic and alcohol related harm and ill health, which has been evidenced by crime statistics and independent corroboration. In contrast, it was submitted that the Applicant's evidence is deficient, lacks objectivity, fails to address alcohol related harm issues or provide suitable harm minimisation strategies and instead relied on assertions based on unqualified opinion without any evidentiary foundation.
59. Appended to the notice of objection were statements by:
- (a) Stacey Petterson, resident of Wiluna and Coordinator at the Wirrpanda Foundation;
 - (b) Colin Bastow, resident of Wiluna and CEO of the Shire of Wiluna;
 - (c) Lena Lang, resident of Wiluna and community worker;
 - (d) Nacanieli Vari, resident of Wiluna and driver for the Aboriginal Medical Service and community worker for the Seventh-day Adventist Church in Wiluna;
 - (e) Richard Whittington, resident of Wiluna and Chief Executive Officer of the NAHS;
 - (f) Mark Ardley, Officer in Charge at Wiluna Police Station since 19 August 2014;
 - (g) Adriano Truscott, resident of Wiluna and Principal of the Wiluna Remote Community School.

The Objection by the Second Objector

60. The notice of objection by the Second Objector progressed on the ground permitted by s 74(1)(a) of the Act. In this regard, while acknowledging:
- (a) concerns about people travelling long distances to purchase packaged liquor from other towns; and
 - (b) existing harms from alcohol in Wiluna,
- it was submitted that the Applicant's approach, i.e. to open a packaged liquor outlet in Wiluna, is more likely to increase rather than decrease existing alcohol-related problems in the town, which mainly relate to packaged liquor.
61. Taking into account the key characteristics of the locality, the Second Objector also submitted that the locality of the proposed *Wiluna Traders* liquor store is such that a packaged liquor outlet would likely increase alcohol-related harm to the surrounding community, for many of the reasons also outlined by the Intervenor and First Objector.
62. The Second Objector also submitted that:
- (a) if the application was approved, the local community would have increased access to packaged alcohol, although it is unlikely that the liquor store would completely replace all alcohol brought into the community by those travelling to other towns;
 - (b) research shows that alcohol availability is strongly related to alcohol consumption and harms, including assaults and the 'results of this research are clear: liberalising alcohol availability is likely to increase alcohol-related harm'¹⁶; and

- (c) packaged liquor is now of particular concern to the public health community and accounts for a large proportion (80%) of alcohol sold in Australia¹⁷ and packaged liquor outlet density is positively associated with rates of assault, domestic violence, chronic disease and very heavy episodic drinking.¹⁸
63. It was also noted by the Second Objector that it is unclear how any of the licence conditions proposed by the Applicant could effectively address the harms associated with packaged liquor in the locality. For example, to address the issue of domestic violence, the Applicant submitted that it would adopt a zero-tolerance approach to street violence or abuse to other customers and staff and would also alert family members, community leaders and the police if they felt that a particular customer was at risk. However, according to the Second Objector, these measures would be insufficient to address complex matters such as domestic and family violence. Additionally, the Second Objector also expressed uncertainty over whether informing community leaders and others of an at-risk customer would prevent domestic violence, given that it is a hidden harm.
64. Finally, the Second Objector submitted that while there may be harms from alcohol to the community due to some members travelling long distances to purchase alcohol and then on-selling, it believed that the Applicant's assertion that opening a packaged liquor outlet in Wiluna will minimise harm to be disingenuous, given that the Applicant has a commercial interest in selling alcohol and 'it is very concerning that their commercial interests... are being presented as solutions to concerns about binge drinking and anti-social behaviour in the locality.'

The Objection by the Third Objector

65. The objection by the Third Objector was made on the grounds that:
- (a) the grant of the application would not be in the public interest (s 74(1)(a) of the Act);
 - (b) would cause undue harm or ill-health to people, or any group of people, due to the use of liquor (s 74(1)(b) of the Act); and
 - (c) would be likely to cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity (s 74(1)(g)(i) of the Act) or would in some other way lessen the amenity, quiet or good order of the locality (s 74(1)(g)(ii) of the Act).

¹⁶ National Preventative Health Taskforce. Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action. Commonwealth of Australia; 2009

¹⁷ Euromonitor International. Passport: Alcoholic drinks in Australia; June 2017

¹⁸ Livingston M. To reduce alcohol-related harm we need to look beyond pubs and nightclubs. Drug and Alcohol Review. 2013; 32(2):113-114

66. The objection was supported by a statement by Mr Allan Ashwin, Chairperson of the board of directors of the Tarlka Matuwa Piarku Aboriginal Corporation RNTBC, who declared that he is a senior Wiluna Native Title Holder, as well as a person who grew up in Wiluna and has lived there his whole life.
67. Mr Ashwin stated that:
- (a) it is well known that alcohol consumption has negative impacts on the health and well-being of Aboriginal people and the Wiluna People are no exception; and
 - (b) he was very concerned that the grant of the application will cause inevitable harm to the health and well-being of the Wiluna People and other Aboriginal people living in or about Wiluna.
68. Mr Ashwin also provided background to the original voluntary restrictions in Wiluna on sale and supply of alcohol (which I included in the Background provided at page 2 of these reasons).
69. Mr Ashwin also submitted that selling alcohol at *Wiluna Traders* will cause problems, including that:
- (a) people will go to *Wiluna Traders* to buy food and groceries and will decide to buy some alcohol instead or as well, and less money will be spent on food and provisions for looking after families and children;
 - (b) food and grocery sale prices at *Wiluna Traders* are high or inflated¹⁹ and if alcohol is similarly sold at high or inflated prices then the Wiluna People who buy alcohol will have significantly less money to spend on food; and
 - (c) people will buy alcohol at the Shop and then inevitably they will consume alcohol outside the Shop premises, near the Shop and/or in public places in Wiluna.
70. Mr Ashwin also submitted that while not all the Wiluna People families drink alcohol, the problems of families who do drink spread to those that do not drink. For example, he stated that when members of a family are drinking, the children usually leave the house to go somewhere safe, often walking around the streets or going to another house and staying there.
71. Mr Ashwin also stated that:
- (a) he does not know any Wiluna People who purchase good with credit cards or buy products online through the internet; and
 - (b) tourists who drive through Wiluna will not buy a lot of alcohol and the Applicant will mainly derive benefit from the money from the Wiluna People buying alcohol on a regular (daily) basis.

¹⁹ A number of receipts from *Wiluna Traders* was attached to the statement to demonstrate this assertion

Statutory Framework

72. Pursuant to s 38(1)(a) of the Act and r 9EA of the *Liquor Control Regulations* 1989, an application for the grant of a liquor store licence must satisfy the licensing authority that granting the application is in the public interest. To discharge its onus under s 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community.
73. Determining whether the grant of an application is ‘in the public interest’ requires the exercise of a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation.²⁰
74. Further, in *McKinnon v Secretary, Department of Treasury*²¹, Tamberlin J observed that:
- ‘The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.’
75. Section 33(1) of the Act gives the licensing authority an absolute discretion to grant or refuse an application on any ground or for any reason that is in the public interest. The scope of this discretion was recently considered by EM Heenan J in *Woolworths Ltd v Director of Liquor Licensing*²² as:
- ‘...an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole. Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest to make those objects the exclusive consideration nor the sole determinants of the public interest.’
76. In this regard, the primary objects of the Act are:
- (a) to regulate the sale, supply and consumption of liquor; and
 - (b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and

²⁰ Refer *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175 and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241

²¹ [2005] FCAFC 142 (*McKinnon v Secretary*)

²² [2012] WASC 384 (*Woolworths v DLL* (2012))

- (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.
77. 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; and
 - (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; 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.
78. Section 16 of the Act requires that each application is considered on its merits and determined on the balance of probabilities. However, it is often the case when determining the merits of an application that tension may arise 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. When such circumstances arise, the licensing authority needs to weigh and balance those competing interests.²³
79. Additionally, where harm and ill-health is a relevant factor, Allanson J explained²⁴ that the licensing authority is required to:
- (a) make findings that specifically identified 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 other relevant factors to determine whether the Applicant had established that it was in the public interest to grant the application.

²³ Refer *Lily Creek No 1*

²⁴ Refer *Carnegies Realty Pty Ltd -v- Director of Liquor Licensing* [2015] WASC 208

Determination

80. After consideration of all of the evidence from all of the parties before me, it is clearly evident that the Wiluna community has a long-documented history of experiencing high levels of alcohol-related harm, which has been formally recognised by both the Director (as outlined in paragraph 8 of these reasons) and the Liquor Commission.²⁵
81. It is also obvious that these high levels of alcohol-related harm in Wiluna did not lessen following the closure of the Club Hotel, which is clear from evidence lodged about:
- (a) alcohol-related violence in Wiluna, including domestic violence associated with the harmful consumption of liquor;
 - (b) people in the Wiluna community experiencing mental health issues, including self-harm and attempted suicide, which are almost always associated with alcohol;
 - (c) the concerns raised by health providers in Wiluna on the impact of FASD on children within the locality; and
 - (d) alcohol-attributable hospitalisation data for the Wiluna LGA residents, which demonstrates that all alcohol-attributable hospitalisations were statistically significantly higher than the corresponding State rate, as were the alcohol-attributable hospitalisation rates for females.
82. It is also apparent that Wiluna suffers from a high level of disadvantage, with even the Applicant acknowledging that ‘the Wiluna Shire would identify itself as an “at-risk” area given the socio-economic fabric and status of the community.’
83. The assessment of Wiluna being disadvantaged is supported by the latest SEIFA data, which ranks the Shire of Wiluna as the fourth most disadvantaged LGA in Western Australia and the suburb of Wiluna being ranked as one of the most disadvantaged suburbs, falling within the bottom two percent.
84. Further, I accept the evidence from the Intervenor and Objectors, that Wiluna suffers from high levels of unemployment and in the absence of employment or other recreational activities in the town, many community members ‘drink all day’. I have also noted that research cited by the Intervenor establishes:
- (a) that the socio-economic circumstances of communities can influence drinking behaviours, which in turn can influence socio-economic circumstances;
 - (b) unemployment can exacerbate alcohol-related problems; and
 - (c) there is also evidence to show a link between unemployment, poor health and other psychological effects, which are often associated with alcohol use.
85. In respect of the research and articles referenced by the Intervenor, while I acknowledge that it does not relate directly to *Wiluna Traders*, it may nonetheless assist in determining the likelihood that harm will occur if the application is granted, particularly where it is

²⁵ For example, refer *Commissioner of Police v Perth City Traders Pty Ltd and Another* (2012) LC 44/2012

connected by other evidence about the local social, demographic and geographic circumstances of Wiluna.²⁶

86. I have also noted that the rates of offending in Wiluna are significantly higher than those of the Perth Metropolitan area and regional Western Australia, which is concerning. In this regard, the First Objector submitted specially prepared crime data, sourced police databases, which analysed recorded crime data at the rate per 1,000 persons, with comparative data also presented for the Perth Metropolitan area and regional Western Australia, broken down into alcohol and non-alcohol related crimes.
87. In my view, the crime data presented at paragraph 55 of these reasons conclusively establishes that Wiluna is significantly impacted by high levels of alcohol-related harm, with crime data for all offences in the locality (at rates per 1,000) showing that alcohol was a contributing factor in 50% or higher in all offences from 2015-2017. I also consider that the crime data shows that the contribution of alcohol is consistently high and concerning in Wiluna and when compared against the metropolitan and regional rates, the locality clearly suffers from domestic violence (both alcohol and non-alcohol related) at a disproportionate rate.
88. It is also beyond doubt that the locality is home to a significant number of persons identified as being at-risk of alcohol-related harm in the Director's *Public Interest Assessment* policy, who according to the 2016 Census data comprise approximately 30% of the population of Wiluna. According to literature cited by the Intervenor, Aboriginal people are more likely to experience harms associated with the consumption of alcohol, as evident in the rates of alcohol-related harm and alcohol-related hospitalisations provided by the Intervenor (referenced at paragraphs 29 and 41 of these reasons.)
89. I also note the clear evidence of the parties that:
 - (a) residents of Wiluna have long travelled to other towns to facilitate the purchase of unregulated amounts of liquor and kinds of liquor that were not authorised for sale in Wiluna; and
 - (b) this occurred even when the *Club Hotel* was operational.
90. Despite the abundant evidence about the high levels of alcohol-related harm and disadvantage in Wiluna, it is apparent that the Applicant, who operates a number of businesses in association with *Wiluna Traders*, including a Local *Australia Post* outlet (LPO), noticed 'the extensive on-line purchasing [of liquor] facilitated by our Australia Post outlet' and 'the high number of money transfers facilitated by our LPO' and was therefore motivated to make the present application.
91. While the Applicant has made a number of bare assertions about the benefits associated with the grant of the application, it has not tendered any evidence to support any of these assertions. Further, as the application is subject to the provisions of s 38(1)(a) of the Act, the application cannot be granted unless the Applicant can establish that it is in the public interest to do so.

²⁶ Refer *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207

92. In *Woolworths Ltd -v- Director of Liquor Licensing*²⁷, Buss JA set out the statutory framework for a determination of an application in which an applicant had to satisfy the Director that the granting of an application was in the public interest in the following terms:
- (a) by s 38(2) of the Act, an applicant has to satisfy the Director 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 judgment;
 - (c) the factual matters which the Director is bound to take into account, in determining whether he is satisfied that the granting of an 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 Director is entitled to take into account, in determining whether he 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) section 5(2) is mandatory whereas s 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 Director 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.
93. By s 38(4) of the Act, the Director may have regard to the following matters in determining whether granting an application is in the public interest:
- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
 - (b) whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened; and
 - (c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
 - (d) any effect the granting of the application might have in relation to tourism, or community or cultural matters; and
 - (e) any other prescribed matter.²⁸

²⁷ [2013] WASCA 227 (*Woolworths v DLL*)

²⁸ No matters have been prescribed under s 38(4)(e) of the Act

94. In determining applications under the Act, Buss JA also stated in *Woolworths v DLL* that the licensing authority must evaluate the evidence before it and make findings and draw conclusions from the evidence, including by inference. An inference is an affirmative conclusion which arises from facts that have been established. Further, the licensing authority's fact-finding task also extends to the making of findings and the drawing of conclusions, wholly or partly, from notorious facts.
95. Further, it was also explained by Buss JA that the licensing authority must apply the public interest criterion, as outlined in *Woolworths v DLL*, to the relevant circumstances, in particular, the findings that have been made and the conclusions that have been drawn and this statutory duty is required to be undertaken by reference to the issues which arose from the application in the context of the relevant provisions of the Act, the evidence (including notorious facts) and any submissions made by the parties.
96. Based on the evidence and submissions of the parties, I have concluded that:
- (a) Wiluna is subject to high levels of alcohol-related harm and disadvantage; and
 - (b) the application has been motivated by the Applicant's private commercial interest in entering the lucrative packaged liquor market in Wiluna, which is observed in the operation of its LPO business.
97. I am also satisfied that there has been no evidence lead by the Applicant to demonstrate that the grant of the application will further any of the objects of the Act. There is no evidence that the grant of the application will cater to 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. Further, there is simply no evidence:
- (a) relating to the requirements of consumers in Wiluna for the types and quantities of liquor proposed by the Applicant;
 - (b) regarding whether the local availability of the types and quantities of liquor proposed will satisfy the requirements of consumers in Wiluna for liquor and discontinue 'grog runs' to other towns for the unrestricted purchasing of amounts and types of liquor; and
 - (c) what the legitimate requirements of tourists, pastoralists and employees of the mining sector might be for packaged liquor while passing through or resorting to Wiluna.
98. Conversely, the Intervenor and Objectors have lodged evidence and made persuasive submissions on the extent of alcohol-related harm in Wiluna and how the grant of the application may exacerbate those problems and be contrary to the Act's harm minimisation object. I have also noted that the Applicant did not controvert any of the harm and ill-health data or other submissions made in the notices of intervention or objections.

99. I also agree with the submissions of the Second Objector that the Applicant's proposed conditions would be insufficient to address complex matters, such as domestic and family violence, given that these are generally hidden harms.
100. Further, while Mr Grundy, a director of Riloch Pty Ltd, submitted that he understood 'the angst and trepidation of a liquor outlet in Wiluna', he stated that he believed that the Applicant could make the liquor store work, with responsible service and harm minimisation strategies and implementation. However, there was little evidence to support the Applicant's assertions about its proposed harm minimisation initiatives, such as the establishment of a liquor accord in Wiluna or exactly how it intends to alert family members, community leaders and/or the police, if it was felt that a particular customer was at risk. Further, none of its proposals addressed key issues associated with the consumption of liquor away from licensed premises, such as high levels of family violence, physical and sexual assault, street drinking and anti-social behaviour, child neglect and loss of culture, which have been relevant in Wiluna since 2008 (as outlined at in the Background at page 3 of these reasons.)
101. Rather than responding in any meaningful way to these issues, the Applicant merely submitted its view that while the risks of vandalism, litter and other criminal acts was high given Wiluna's past experience when the *Club Hotel* was operating, as it felt that these problems arose because of the hotel's '...dual function as a tavern where people would drink on site...' However, this is not an assertion that I can accept. It seems illogical to me to suggest that there was no link between the sale of packaged liquor by the *Club Hotel* and the criminal and anti-social activities occurring away from the licensed premises, particularly given the findings of the Director in 2008 and 2013, regarding the problems associated with packaged liquor sales (outlined in the Background at page 2 of these reasons.)
102. Similarly, while the Applicant acknowledged that there are high risks of vandalism, litter and other criminal acts associated with the grant of the application, it proffered the view that controls at the point of sale could somehow overcome these issues, notwithstanding that they occur away from the licensed premises. In my view, these submissions do little to advance the Applicant's case, particularly when the representations of the Intervenor regarding the types of harms that occur away from licensed premises are considered, which include assaultive violence, child maltreatment, alcohol-attributable hospitalisations and injuries amongst young adults.
103. This view is consistent with the findings of Greaves J in *Re Gull Liquor, Gingers' Road House, Upper Swan*²⁹ that 'Harm Considerations are not limited to consumers of alcohol at the premises but includes harm caused to people other than the consumers of liquor.'
104. Therefore, in the circumstances, I can only make the most generalised inference from the Applicant's assertions that the grant of the licence may cater to the requirements of some consumers in Wiluna. Although, in so doing, I am aware that many residents of Wiluna already have long established alternative sources for the purchase of packaged liquor, such as on-line ordering or driving to towns without liquor restrictions.

²⁹ (1990) 20 SR (WA) 321

105. However, a finding that the grant of the licence may cater to the requirements of some consumers in Wiluna is not determinative of the application. As noted by Banks-Smith J in *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*³⁰, 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.
106. 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.³¹ Object 5(1)(b) of the Act is directed towards the minimisation of alcohol-related harm in the community.
107. In respect of object 5(1)(b), it should be noted that the harm contemplated by the Act includes an increase in anti-social or injurious behaviour and the harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm.
108. Allanson J held in *Carnegies Realty Pty Ltd -v- Director of Liquor Licensing*³² that where object 5(1)(b) was relevant to the determination of an application there are four steps to be undertaken, namely:
- (a) make findings that specifically identified 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 other relevant factors to determine whether the applicant has satisfied the licensing authority that it was in the public interest to grant the application.
109. In my view the evidence of the Intervenor and Objectors clearly indicates that there is existing alcohol-related harm in the locality and that Wiluna experiences alcohol-related harm above the State rates.
110. Based upon this evidence, I find that there is a high rate of pre-existing alcohol-related harm in the locality surrounding the proposed liquor store.
111. In considering the likely degree of harm to result from the grant of the application it is appropriate to assess the vulnerability of the community to the likely adverse impacts of alcohol use. In this regard, all of the parties provided evidence of the high-risk factors in the local community.

³⁰ [2017] WASC 88

³¹ Refer *Woolworths v DLL* (2012)

³² [2015] WASC 208 (*Carnegies v DLL*)

112. By necessity, assessing the likely harm to result from the grant of the application it is a matter of prediction, with Ipp J stating in *Executive Director of Health -V- Lily Creek International Pty Ltd & Ors*³³ 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.’

113. I have particularly noted the Applicant’s intention to sell liquor at prices that are intended to be competitive with *Dan Murphy’s*, who has a lowest price guarantee, as well as other liquor merchants who sell packaged liquor on-line. Therefore, I consider the grant of the application would see the introduction of low priced packaged liquor into a locality that already experiences rates of alcohol-related harm at levels significantly above the State rate.

114. I also consider the evidence of the parties establishes that Wiluna is socially disadvantaged with the presence of at-risk persons who may be vulnerable to alcohol abuse. In my view, it is likely, as proposed by Mr Ashwin, that some at-risk persons will be attracted to the Applicant’s supermarket to buy food and groceries and will decide to buy alcohol instead or as well, which will result in less money being spent on food and provisions for looking after families and children. Mr Ashwin’s proposition is supported by the representations of the Intervenor regarding documented reports of financial and related social issues associated with money being spent on alcohol at the *Club Hotel*, rather than necessities.

115. I have also been persuaded by Mr Ashwin’s submission that tourists who visit Wiluna will not buy a lot of alcohol and instead the Applicant will mainly derive benefit from the custom of the Wiluna People, who are likely to buy alcohol on a daily basis.

116. Given the existing levels of alcohol-related harm in the locality, the presence of at-risk persons, the socio-economic status of a large section of the locality and other existing risk factors, I found, on the balance of probability, that the offering of consistently low-priced liquor at *Wiluna Traders* is likely, over time, to contribute to the existing high rate of alcohol-related harm in the Wiluna community.

117. In *Liquorland (Australia) Pty Ltd -v-Executive Director of Public Health*³⁴, 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 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.’

³³ [2000] WASCA 258 (*Lily Creek No 1*)

³⁴ [2013] WASC 51 (*Liquorland v EDPH*)

118. I also considered the following observations of Wheeler J in *Executive Director of Public Health v Lily Creek International Pty Ltd*³⁵ to be relevant:

‘The Act directs attention to the minimisation of alcohol related harm generally (s 5(1)(b)). The relevant question for the Court, in that case, is the level of alcohol related harm, due to the use of liquor, which is likely to result from the grant of an application. This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather, it seems to me that must necessarily be assessed against any existing harm or ill-health so as to assess the overall level which is likely to result if a particular application is granted. Where, as occurs in probably the majority of cases, the existing level of alcohol related harm is no greater than that which appears to be commonly accepted in the community, the distinction is probably not significant.

However, where there is already a very high and serious level of alcohol related harm in a community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words, it is not the ‘risk’ of harm in some abstract sense which is relevant, but rather the risk having regard to the proved circumstances of the particular area in relation to which the application is made...’

119. Consequently, when I weighed and balanced the positive and negatives aspects of this application, in the context of the public interest considerations, I formed the view that the likely negative outcomes for this locality, given the existing high rates of alcohol-related harm and the presence of other risk factors outweighed the Applicant’s desire to establish a packaged liquor outlet. I also considered that even a small increase in the risk to this community, and in particular to the at-risk persons in the Wiluna community, would be unacceptable.

120. Therefore, given my findings, particularly in respect of objects 5(1)(b) and 5(1)(c), this application must be determined by balancing competing considerations in the public interest (i.e. the interests of consumers of liquor related services and the objects of minimising alcohol related harm.)³⁶ Any purported public interest associated with the grant of the application must be considered in the context of existing and potential harm due to the use of liquor.

121. Tamberlin J in *McKinnon v Secretary, Department of Treasury*³⁷ 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 publicand its content will depend on each particular set of circumstances.’

³⁵ [2001] WASCA 410 (*Lily Creek No 3*)

³⁶ Refer *Executive Director of Public Health -v- Lily Creek International Pty Ltd & Ors* [2001] WASCA 410 (*Lily Creek No 2*)

³⁷ [2005] FCAFC 142 (*McKinnon v Secretary*)

122. In consideration of the evidence presented, and the findings I have made about the locality surrounding the proposed liquor store, I concluded that the Applicant had failed to discharge its onus under s 38(2) of the Act to satisfy me that the grant of the application was in the public interest and the application was therefore refused.
123. 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.
124. This matter has been determined by me under delegation pursuant to s 15 of the Act.

A handwritten signature in black ink, appearing to be 'M. J. ...', written over a horizontal line.

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING



Department of
**Local Government, Sport
and Cultural Industries**

Your Ref: JC201702092

Our Ref: A773077498

Enquiries: Richard Duncan
☎ (08) 6551 4810

Mr J Chitty
Robertson Hayles Lawyers
P O Box Z5403
PERTH WA 6831

Dear Mr Chitty

**APPLICATION FOR THE CONDITIONAL GRANT OF A LIQUOR STORE LICENCE:
WILUNA TRADERS**

I refer to your letter of 11 March 2019 in which you sought reasons for the notice of decision, dated 8 March 2019, which refused your client's abovementioned application.

Please find attached the relevant reasons to support the notice of decision.

Should you have any enquiries regarding this matter, please contact me on telephone number (08) 6551 4810.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Duncan', with a stylized flourish extending to the right.

Richard Duncan
CUSTOMOER SERVICE OFFICER – LIQUOR CONTROL AND ARBITRATION BRANCH

17 June 2019

Enclosure