

***REDACTED REASONS FOR DETERMINATION OF**

**MR EDDIE WATLING (DEPUTY CHAIRPERSON) AND MR MICHAEL EGAN
(MEMBER)**

**In accordance with consent orders (refer paragraph 15) given effect to by the Commission on 4 June 2015 and with the consent of the parties, this is a redacted version of the determination.*

Background

- 1 The licensee of the Peninsula Tavern at 223 Railway Parade, Maylands, Australian Leisure and Hospitality Group Pty Ltd (“the applicant”), has applied for approval to redevelop the Peninsula Tavern and accompanying BWS bottle shop (“the premises”).
- 2 The proposed development involves the demolition of the existing premises and the construction of a new tavern and Dan Murphy’s liquor store.
- 3 The application and a public interest assessment (“PIA”) were lodged on 16 April 2014. The application is being treated as an application under section 62 of the *Liquor Control Act 1988* (“the Act”) for an alteration/redefinition of the premises.
- 4 On 20 May 2014, the applicant was advised that the Director of Liquor Licensing (“Director”) had determined that section 38(2) of the Act would apply in respect of the application. As a consequence, the applicant is required to demonstrate that granting the application is in the public interest.
- 5 The applicant was also advised of the Director’s advertising requirements which were subsequently complied with.
- 6 A number of parties (as listed above) have lodged an objection pursuant to section 73(4) of the Act.
- 7 The Commissioner of Police (“the Police”) lodged a notice of intervention pursuant to section 69 (6)(c)(ii) and (iv) of the Act and a notice of objection pursuant to section 73(1) of the Act.
- 8 The Executive Director of Public Health (“EDPH”) lodged a notice of intervention pursuant to section 69(8a)(a) and (b) of the Act.
- 9 On 14 July 2014, the Police requested the Director to issue two summonses pursuant to section 18(1) of the Act, requiring the applicant to produce records, essentially sales and volume data for three years ending 30 June 2014, in respect of the liquor stores BWS Peninsula Tavern Maylands, Dan Murphy’s Hyde Park, Dan Murphy’s Morley, Dan Murphy’s Midland and Dan Murphy’s Balga (“sales data”), to assist the Police to assess and verify claims made by the applicant in the PIA regarding the nature of its business, more specifically, the characterisation of

the Dan Murphy's stores as stores which predominantly trade in the sale of premium wines.

- 10 The summonses were issued by the Director to Australian Leisure and Hospitality Group Pty Ltd and Woolworths Limited.
- 11 The Director also granted leave to the Police to serve the summonses outside of Western Australia.
- 12 On 13 August 2014, the applicant objected to the summonses issued to Woolworths Limited on the grounds that section 18(1) of the Act did not apply to Woolworths Limited as it is not the applicant, and the summons required the production of highly commercial sales data which is of little or no probative value.
- 13 In so far as the information sought is of little or no probative value, the applicant explained:

The sales data of three stores run by a different operator under a different category of liquor licence in different geographical locations will not have any proper evidential application to the questions in issue in the application, nor will it assist in allowing inferences to be drawn as to the likely sales to be made from the Peninsular (sic) Tavern. The sales of alcohol in other localities will have little to no bearing on the sales at the proposed Peninsula Tavern.
- 14 On 7 November 2014, the Director, pursuant to section 24 of the Act, referred the application to the Liquor Commission ("the Commission") for determination.
- 15 Following negotiations between the applicant and the Police on the summonses, the applicant lodged with the Commission, on 29 May 2015, a draft memorandum of consent orders which the Commission gave effect to on 4 June 2015. The orders prohibit the publication of the sales data as evidence before the Commission pursuant to section 16(9)(b) of the Act and the disclosure of the sales data to anyone other than the applicant, Woolworths Limited and the Police, and their respective representatives (identified in the consent orders).
- 16 The Commission hearing to determine the application was conducted on 2 September 2015, and was attended by various counsel representing the applicant, Police, and the EDPH, and in person by, or by a representative of, the objectors Ms Baker, MCAAY and Reverend Albany.
- 17 The Commission has sought to protect the confidentiality of the sales data by limiting reference to actual data in these reasons; however, to the extent necessary to explain the Commission's decision, reference has been made to the sales data and to various submissions on the data by the Police and the applicant.

Submissions on behalf of the applicant

- 18 The applicant's PIA is accompanied by a report prepared by:
 - MGA Town Planners ("MGA Report"); and

- a report from Creating Communities Australia Pty Ltd (“Creating Communities”) on an Open Night (“open night”) conducted by the applicant to inform and survey attendees on the proposed development (“Creating Communities Report”).
- 19 The existing Peninsula Tavern has an approximate public floor area of 596m² comprising a public bar, TAB, lounge bar, which is seldom used, and two courtyards, one of which has been decommissioned. The proposed new tavern will have an approximate public area of 489m². The existing bottle shop will be replaced by a Dan Murphy’s store of 1117 m² (with a retail trading space of 767 m²).
 - 20 The existing premises are outdated and according to the applicant “no longer in keeping with general community tastes”.
 - 21 According to the MGA Report, the previous owner of the site on which the premises are located proposed a mixed-use development of the site comprising 39 residential apartments, offices, a tavern of 1100m² (including alfresco space) plus retail space understood to include a bottle shop. Parking was to be at basement level.
 - 22 As this type of mixed-use development is inconsistent with the business model of the applicant, a hotelier, and because the existing premises were viewed by the applicant as not meeting contemporary requirements, the premises were redesigned to include a TAB, sports lounge, bistro and courtyards and a bottle shop trading under the Dan Murphy’s banner.
 - 23 The local authority recommended to the State Joint Development Assessment Panel (“JDAP”), to which the proposed development had been referred, that the proposal be rejected as the plans did not encourage interactivity between patrons and pedestrians on the footpath.
 - 24 The JDAP refused the proposal on the grounds recommended by the local authority. An application for review was lodged with the State Administrative Appeals Tribunal and set down for mediation. The JDAP raised a concern about the setback to Railway Parade and the interaction of the development with pedestrians on the adjacent footpath. In addition, as the site was earmarked for mixed-use development, the JDAP considered there should be a wider range of uses than was proposed. There was no suggestion, according to the MGA Report, that the proposed tavern or packaged liquor outlet were inappropriate.
 - 25 At mediation, the principal issue was considered to be the setback to Railway Parade and to accommodate that concern the applicant determined to demolish the entire existing structure and presented new plans for the Tavern and Dan Murphy’s Liquor outlet which were ultimately approved (i.e., the proposed Tavern of 489m² and Dan Murphy’s liquor store of 1117m²).
 - 26 The premises are virtually opposite, and separated by Railway Parade (a main road) from the Maylands train station, and are on the opposite side of the railway line to the main part of the town centre of Maylands.

- 27 The premises are located in an area zoned “medium and high residential”, but are located within a “Special Control Area” under the Town Planning Scheme which enables the land to be used for purposes including a tavern and retail shop.
- 28 It was submitted that the premises are also within an area identified for growth and development by the Department of Planning and Infrastructure in 2007, defined as the Maylands Activity Centre Zone, which comprises the main city centre on the opposite side of the railway line to the premises and a number of small businesses along Railway Parade either side of the premises.
- 29 The applicant contends the proposed redevelopment of the premises is directly consistent with the objectives of the Maylands Activity Centre Zone.
- 30 The applicant also submits the proposed redevelopment will help achieve the objectives of the Maylands Activity Centre Zone and provide a community-focused meeting place for people living in the locality.
- 31 According to the MGA Report, approximately 80,000 vehicles per day use the major roads adjacent to the premises, including Guildford Road which carries the highest volume of traffic to and from the CBD, and Railway Parade.
- 32 Although the railway line “acts as a barrier between the premises and the eastern side of the train tracks”, the applicant submits that the railway crossings at Seventh Avenue and Caledonian Avenue will ensure access to the premises is not limited and that the tavern and Dan Murphy’s store will be highly accessible by both residents and commuters from the CBD. The new premises will have 95 on-site car bays.
- 33 The applicant presents itself as a developer and operator of venues comprising a combined tavern and Dan Murphy’s outlet, having developed premises similar to the proposed premises around the country on 67 occasions previously.
- 34 The applicant also highlights, as examples, a number of venues in Western Australia and points to its record:
- a) as a responsible manager of licensed premises with a strong focus on the responsible service of alcohol and community education;
 - b) as a participant in best practice industry and government forums; and
 - c) as a provider of a safe and healthy environment in which to work and socialise.
- 35 The design of the new tavern will encourage patrons to consume alcohol with a meal and minimise alcohol-related issues associated with what the applicant terms “vertical drinking”. According to the applicant, many of the risk factors that affect the likelihood of alcohol-related harm at licensed premises and that are associated with the operation of the current tavern will be eliminated by:
- a) reducing the capacity of the tavern;
 - b) completely updating the décor from a tired and old tavern to a modern bistro;

- c) improving lighting and ventilation;
 - d) emphasising and providing for the service of food; and
 - e) greatly reducing the “macho” culture of the current tavern by “the new gentrified Peninsula Tavern aimed at a broader cross-section of society, including families and women”.
- 36 The large size of the Dan Murphy’s store is necessary to accommodate the huge range of products, and to display products in a way that is appealing to browsing shoppers.
- 37 The new premises will not be used to play loud music and the new “classier venue with its emphasis on dining will reduce the noise levels further”. In addition, the proximity of the railway station will aid the dispersion of customers and assist in preventing drink driving.
- 38 In contrast to the existing drive-through bottle shop which does not provide consumers with a wide variety of choice or cater to the demographics of the locality, the “bigger range and premium wines offered at Dan Murphy’s will appeal to the increasingly gentrified Maylands area”.
- 39 The catchment area for the new premises, in particular the proposed Dan Murphy’s store, is considered by the applicant to extend beyond the defined locality to include suburbs such as Ascot, Redcliffe, Belmont and Rivervale to the east and south-east across the Garratt Road Bridge. The new premises will also cater for customers who pass through the Maylands area particularly travelling along Guilford Road to and from the Perth CBD. The applicant contends that these customers are not served by the current Dan Murphy’s stores at Hyde Park (4.4km from the premises) or Morley (5.3km from the premises) either because these stores are located on a different arterial route from the CBD or because the stores are not as convenient.
- 40 In general historical terms, the MGA Report describes the locality as one which was of an industrial/working class character regarded as a lower socio-economic area, but which more recently has been “gentrified” with riverside properties generating strong demand, and has seen rising values and a resurgence in property due to the convenience to Perth City.
- 41 According to the MGA Report, “while cheaper housing remains in the locality accommodating less fortunate people, there is, nevertheless, a trend towards more affluence”.
- 42 The locality is cosmopolitan in nature with relatively few family households and a high proportion of single person and couple households. The number of rental accommodations is high, particularly in Maylands (54.1% compared to 28.1% for the State), and while the median individual income in the locality is relatively high and above the State average, the median household income in Maylands is well below the State average (apparently because the number of breadwinners per household is low).

- 43 Having regard to the ABS social economic index for areas (based on postcodes), the MGA Report concludes that the locality is an area of above average affluence.
- 44 The PIA and MGA Report identify a number of sensitive premises in the locality and highlight:
- a) the Jehovah Witness Kingdom Hall (located “over the back fence”);
 - b) the Shopfront Outreach Support Centre (“Shopfront”) which offers assistance and support to marginalised people (located in Whatley Crescent in relatively close proximity to the premises, but on the opposite side of the railway line);
 - c) the Derbal Bidjar Hostel which accommodates Aboriginal people from regional and remote communities who need to visit the city for medical treatment (585 metres walking distance from the premises, with a capacity to accommodate up to 30 people);
 - d) 55 Central which provides services to the homeless and people at risk of homelessness, including crisis accommodation and community support (800 metres walking distance from the premises with 24 beds);
 - e) Elizabeth Hansen Autumn Centre which provides accommodation to Aboriginal medical patients with accommodation for up to 28 patients (1670 metres walking distance from the premises).
- 45 There are two hotels, four taverns, one small bar, eight liquor stores and five clubs in the locality, four of which are within the precinct that can be defined as the Maylands Town Centre (specifically, a small bar, two liquor stores and the Peninsula Tavern).
- 46 The applicant contends that as this application relates to an existing licence, outlet density is not an issue as it will not be increasing the number of licensed premises in the area, and, overall, the other liquor stores do not provide the product range or service that will be on offer at the proposed Dan Murphy’s.
- 47 The applicant describes the Australian Liquor Industry as benefiting from the high disposable income of Australian consumers which has enabled the industry to expand and develop, and given rise to a need for liquor stores such as Dan Murphy’s to cater to a growing consumer demand for a greater range of products.
- 48 The applicant also points to the fact Australians are drinking slightly less alcohol per capita overall as an indication that the increase in the number of large format liquor stores has not increased the amount of alcohol people are consuming and that the size of the stores allows a variety of products to be displayed without increasing, overall, the amount of liquor that consumers buy.
- 49 The opportunity to browse is also presented as contributing to a more discerning choice of product as opposed to spending as little as possible.

- 50 The applicant conducted an open night in March 2014 at the existing Peninsula Tavern to inform members of the community about the proposed development and to seek feedback. In response to 1500 invitations, 141 people attended and 85 responded to a survey (a pro forma questionnaire) at the event.
- 51 In response to the survey, the majority of respondents indicated that the development of the Peninsula Tavern site will provide better premises and provide better food.
- 52 Of the concerns or issues regarding the proposed development, respondents selected large store, potential harm from liquor, and cheap alcohol as their main concerns.
- 53 In order to address and mitigate issues and concerns evident from the survey, Creating Communities recommended (in its report dated March 2014), among other things:
- a) an interface management plan to provide an agreed process to guide communication between the applicant, residents and key stakeholders;
 - b) a community engagement strategy to ensure involvement with key community members, businesses, stakeholders and “at risk” community groups, including regular meetings with groups and community members; and
 - c) forming a working group with particular institutions who deal with alcohol-related issues to develop an area specific strategy for ensuring that the tavern and retail outlet do not exacerbate the current situation and to meet regularly.
- 54 These recommendations have not been implemented, but the applicant has indicated a commitment to do so. This undertaking to work with the community has, according to the applicant, already been demonstrated by its voluntary commitment not to sell wine casks over two litres at the existing BWS store following community consultation in early 2013, due to problems arising from street drinking in the area.
- 55 The PIA details some of the alcohol related harms in the City of Bayswater and North Metropolitan area noting the higher rates for male hospitalisations due to alcoholism, alcohol related diseases, falls, suicides and assaults, and the higher proportion of drink driving offences without charge and with charges for in excess of 0.05% BAC, but the lower proportion of individuals charged with in excess of 0.08% and 0.15% BAC.
- 56 The lower than State average rates of non-domestic and domestic alcohol-related assaults in the Northern Metropolitan area are also highlighted.
- 57 The applicant points out that the object of the Act is to minimise harm, not prevent it absolutely and that the need for the new premises to ensure the development of the liquor industry must be weighed against the potential for any harm that may arise.

58 In this regard, it is submitted:

- a) the applicant is well regarded for its management practices and will be introducing Dan Murphy's national responsible service of alcohol policies;
- b) the issue of availability of cheap alcohol is for the most part a misconception of the Dan Murphy's brand and products;
- c) Dan Murphy's sells more premium priced products than cheap products and the Dan Murphy's price difference is mostly evident at the high-end price level;
- d) the "full price" difference (i.e. both economic and convenience considerations) on cheap wines at Dan Murphy's which are favoured by the vulnerable and problem drinkers is not significant enough that those people would forego the convenience of their local liquor store;
- e) while outlet density has been considered by many to be a contributor to alcohol-related harm, this application is not increasing the number of premises, therefore, outlet density is not affected by the outcome of this application;
- f) the redesigned tavern and a focus on food is expected to reduce alcohol-related problems, certainly those currently associated with the existing premises;
- g) the Dan Murphy's store will reduce its trading hours by closing at 9.00 p.m. Monday to Saturday and 7.00 p.m. Sunday which will eliminate "late night top-ups" – although the store will open two hours earlier Monday to Saturday and one hour earlier on Sunday; this is intended to cater to commercial trade;
- h) CCTV and security measures are also expected to mitigate potential alcohol-related problems – the applicant points out that it is committed to provide a discrimination free shopping experience, and will not refuse to serve any customer purely based on skin colour or clothing;
- i) responsible buying practices, community education programs (e.g. "don't buy it for them" and the school uniform policies directed at juveniles), the close proximity of the Midland train line and extensive consultation, communication and engagement with residents, key stakeholders and agencies helping certain "at risk" groups will assist in minimising harm;
- j) people utilising the services of the Elizabeth Hansen Autumn Centre and Derbal Bidjar Hostel are unlikely to walk to the proposed Dan Murphy's store as the price savings on the lower ranged products is not great enough to overcome the convenience factor of using a closer store; and
- k) the locality is not considered a low socio-economic area, and the new premises will encourage a higher socio-economic clientele to frequent the

tavern with the typical Dan Murphy's customer also in the high income bracket.

- 59 The applicant also summarises in the PIA, key details and outcomes of a report prepared by Data Analysis Australia in 2010 ("Impact Review Report") which sought to measure the impact of the operation of certain Dan Murphy's stores in Western Australia (Balga, Albany and Midland) on alcohol-related harm - the analysis of the available data found "the impact of the Dan Murphy's stores was too small to be detected" and the applicant presented this as evidence that "the proposed redevelopment of the existing Peninsula Tavern to incorporate a Dan Murphy's will cause no additional liquor-related harm".

Submissions on behalf of the EDPH

- 60 The intervention from the EDPH seeks to make representations to establish the characteristics of the proposed Dan Murphy's liquor store (large format, cheap alcohol, high volume capacity, convenience) when combined with the vulnerabilities of the local community, are likely to cause harm or ill-health to people or a group of people if the application is granted. Specifically:
- a) the application will increase the packaged liquor capacity of the existing venue by over 300%, the equivalent of introducing three additional liquor stores to the area;
 - b) the superstore's lowest price guaranteed liquor, large size, layout and location are risk factors for alcohol-related harm;
 - c) the risk of harm associated with each of these characteristics of the store is exacerbated when introduced to an environment that already contains risk factors;
 - d) the locality of the proposed liquor store contains numerous risk factors including, but not limited to:
 - 1. the presence of "at risk" groups in the locality who currently experience alcohol-related harm, both directly and indirectly;
 - 2. an increase in reported alcohol-related violence over the past three years;
 - e) relevant research and literature highlights the potential for harm to occur by providing a contextual nexus to the specific locality and application characteristics;
 - f) the ability of the applicant to effectively minimise harm is limited, given to do so would require reducing the availability of cheap liquor, altering the venue format and changing the outlet's location.

- 61 In contrast to the applicant's claim that the proposed Dan Murphy's store is not an issue when considering outlet density, the EDPH points out that the value of looking at the characteristics of an outlet, such as size and related liquor sales capacity, has been highlighted in recent years in the context of outlet density considerations.
- 62 The EDPH has referenced a significant body of research establishing a relationship between the availability of alcohol and associated harm and ill-health in support of the proposition that the significant increase in the physical availability of liquor in the locality due to the size of the Dan Murphy's store when compared to the existing BWS outlet, will increase the likelihood of harm and ill-health occurring.
- 63 Furthermore, the specific characteristics of the store (size, layout and accessibility) together with the lowest price guarantee are considered to be cause for concern and distinguish the store from other liquor outlets in the locality. Based on the available literature and on advice from service providers in the locality that the likely impact of cheaper alcohol is an increase in alcohol-related harm in the locality, the reduced price of alcohol available in the community is a particular concern to the EDPH.
- 64 Maylands and the surrounding suburbs are considered to form a vulnerable community with a real potential to be adversely impacted given:
- a) the association of price to consumption and harmful drinking patterns;
 - b) the "at risk" groups in the area experiencing alcohol and other associated problems; and
 - c) the increase in alcohol-related violence since 2011.
- 65 In the PIA, the applicant states that "60% of Dan Murphy's red wine products are sold at price points over \$25.00, including 24% of products priced at over \$100.00" (and the Dan Murphy's model is not to sell cheap wine). In response, the EDPH points out that the products stocked do not represent products sold and refers to the "Top Sellers" section of the Dan Murphy's website which reveals that by far the highest selling products are within the \$0.00 - \$9.99 category followed by products priced between \$10.00 - \$19.99.
- 66 Further, ten of the fifteen "Top Sellers" in the \$0.00 - \$9.99 price category were priced at \$5.00 or less. A review of specials promoted on the Dan Murphy's website further reinforces lower priced products as a key feature of the Dan Murphy's stores.
- 67 In line with the research, the EDPH contends it is to be expected that the consumption of alcohol by Dan Murphy's customers will focus strongly on low-cost alcohol and that the availability of low-cost alcohol will increase harm and ill-health likely to be suffered due to alcohol use.
- 68 The EDPH refers to United Kingdom research into the excessive drinking habits of young adults and the influences of pricing on their decision making, and to the finding in that research that the marketing of low price alcohol maintains the place of alcohol in culture and helps establish it anew for each generation.

- 69 The lowest price brand of Dan Murphy's has also been examined by Professor Rob Donovan, a recognised health expert, who reports, among other things:
- a) the cumulative effect of the Dan Murphy's advertising, along with the in-store layout, is designed, and serves, to create an image in the customers' mind that purchasing at Dan Murphy's will be cheaper and better value than elsewhere, particularly in relation to volume purchases;
 - b) in his opinion, the Dan Murphy's low pricing position is a deliberate strategy in that it can be applied in low, medium and upper income areas – that is, it will appeal to consumers in middle and upper income areas who can be described as “bargain hunters” and “value for money seekers”, but is particularly appropriate for low income areas (and heavy drinkers) where the vast majority of consumers will attempt to maximise quantity of purchase for a given amount;
 - c) where low price positioning is linked to “bundle buys”, customers will tend to purchase in bulk;
 - d) exposure to large amounts of stock is likely to give rise to unplanned purchasing; and
 - e) a low or competitive price positioning results in lower margins which requires higher turnover to maintain profits.
- 70 In response to the statement in the PIA that “the full price difference on the cheap wines at Dan Murphy's, which are favoured by the vulnerable groups and problem drinkers, is not sufficient enough that those people would forgo the convenience of their local liquor store”, the EDPH engaged a world renowned alcohol policy and prevention specialist and author of numerous research papers on the impact of price, Professor Timothy Stockwell, to provide his opinion. Professor Stockwell reports that:
- a) the applicant is correct to point out that purchasing decisions are not just affected by price, but also cost and convenience of locating the product in question;
 - b) while all potential customers within the neighbourhood will consider the cost in terms of time to travel and expenditure on petrol etc., if these are held constant then the availability of a larger store with cheaper alcohol will make purchasing decisions more attractive and hence more frequent for potential customers from a wider geographical area;
 - c) there is evidence that price changes for the cheapest drinks affect all levels of drinking, but most especially that of the heaviest drinkers; and
 - d) the (his) overall conclusion is that allowing this application to proceed would put upward pressure on local consumption levels for all classes of drinkers in the neighbouring community, would bring more customers to make purchases

and that, on average, each customer would be more likely to purchase higher volumes.

- 71 The impact of the Dan Murphy's store on the broader population is also of concern to the EDPH particularly the longer term harms resulting from the increased consumption of alcohol. A Perth survey in 2011 revealed that price has the potential to influence both the level of consumption and/or harmful drinking patterns within the population.
- 72 The EDPH also highlights concerns evident from research into the types of harms that may result from packaged liquor, including:
- a) greater outlet density has been found to be associated with increased rates of child maltreatment, assaultive violence, vehicle accidents, pedestrian injuries and injuries among young adults;
 - b) per capita alcohol sales by liquor stores have been shown to be closely and positively related to levels of assaults, road crashes, drink driving and alcohol-related hospitalisations;
 - c) a growing number of studies have linked alcohol outlet density with domestic violence, adding to the evidence that alcohol availability is a risk factor for domestic violence (which is of particular concern in the Maylands locality where alcohol-related domestic assaults have been increasing since 2011); and
 - d) a New South Wales study found a positive correlation between alcohol sales through off-licences (those that sell packaged liquor) and both malicious damage to property and offensive behaviour incidents.
- 73 In response to the statement in the PIA that Australians are drinking slightly less alcohol per capita overall indicating that the increase in the number of large format liquor stores has not increased the amount of alcohol people are consuming, the EDPH acknowledges that national figures have their place, but points out that the estimated per capita consumption in Western Australia is higher than the national rate and risky drinking levels for lifetime alcohol-related harm are elevated in Western Australia.
- 74 The EDPH devotes a significant proportion of the intervention to the characteristics of the local community and potential impact of the Dan Murphy's store on "at risk" groups, particularly Aboriginal people, the homeless, people experiencing mental illness, and other disadvantaged people who rely on local social services.
- 75 There are organisations in the locality providing social services to those with complex problems exacerbated by alcohol use, and, in the view of the EDPH, the granting of this application will create an environment that increases the risk of harm among individuals experiencing alcohol-related harm and ill-health.
- 76 Although the PIA highlights a relatively high level of social economic advantage in the locality compared to the State, the EDPH points out that there are some pockets

containing lower socio-economic and disadvantaged people which, among other things, is a relevant consideration in this application having regard to the fact that studies consistently show that lower socio-economic groups and people with limited disposable income (young people, indigenous people and heavy drinkers) are more directly impacted by the price of alcohol products.

- 77 As is evident from Professor Donovan's analysis, increased access and convenience of obtaining alcohol would make it difficult for those who have alcohol problems to abstain from, or reduce, their drinking.
- 78 The EDPH highlights the serious concerns of a number of Managers of the various service providers in the locality about the impact the introduction of a Dan Murphy's store will have on their clients and the locality generally.
- 79 Moreover, based on evidence from those agencies, many of those at risk in the local community use the train to access local social services in the area, with the Maylands train station being directly opposite the proposed Dan Murphy's store.
- 80 The EDPH intervention details data sourced from the WA Police for alcohol-related offences, domestic assault offences and domestic violence offences between January 2011 and April 2014, and expresses similar concerns to the Police about the potential for an increase in the rate of offences and harm and ill-health.
- 81 The EDPH highlights the limitations in the Impact Review Report referred to in the PIA and submits that the evidence is not conclusive authority for the proposition there has not been an objective increase in alcohol-related harm associated with the stores the subject of the review. In support, the EDPH refers to the suburb of Balga, which experiences a low socio-economic status and higher than State rates of alcohol-related violence, as an example of a locality with a Dan Murphy's store in which a high degree of alcohol-related harm is evident.
- 82 Whilst the EDPH acknowledges the Act does not require the prevention of harm, but the minimisation of harm, it is submitted the ability of the Dan Murphy's management to effectively minimise harm is limited unless the lowest price guarantee, availability of cheap liquor, store format and location is altered.

Submissions on behalf of the Commissioner of Police

- 83 The Police have expressed minimal concerns regarding the upgrading of the tavern facility, but submit that the negative effects of the intended manner of trade and marketing of the Dan Murphy's store are not in the public interest, particularly in light of the locality. The Police are, therefore, opposed to the expansion and rebranding of the BWS store to a Dan Murphy's store.
- 84 Increasing the availability of cheap alcohol will not minimise harm, but rather raise the level of harm above existing levels created by the existing premises and other licensed premises, as well as adversely impact "at risk" groups, in the locality.

- 85 The Police highlight the incidence of alcohol-related and non-alcohol-related domestic assaults and incidents for Maylands and refer to research in support of the contention there is a causal relationship between alcohol consumption and domestic violence (as well as the fact many domestic violence offences involving alcohol go unreported).
- 86 “At risk” people are particularly vulnerable to the availability of cheap and discounted products as there is a greater chance they will consume liquor and become intoxicated more regularly. Further, as they do not have an extensive support or supervisory network in place they are more likely to commit offences.
- 87 The Police question the applicant’s focus in the PIA on the premium wine product range and extensive product lines pointing out that the extension of the product lines is a matter relevant to choice, but the issue of cost of particular products and the volume of sales of low cost products is relevant to the issue of harm and ill-health.
- 88 In the view of the Police, these statements in the PIA create the impression that Dan Murphy’s stores do not sell a significant amount of low cost liquor.
- 89 The Police also submit, following an analysis of the median house prices and incomes in various suburbs in Western Australia, that the Dan Murphy’s stores located in the suburbs with house prices that fall below the Perth metropolitan median house price are more likely to cater to consumers by offering cheap liquor products rather than premium wines and a broad range of products.
- 90 A review of the Dan Murphy’s internet webpage reveals that the majority of discount offers are in the \$0.00 - \$10.00 range with discount offers also featuring bulk liquor purchases.
- 91 The Police consider that the marketing and advertising strategy is in stark contrast to the applicant’s PIA where the applicant describes the predominant purpose of the Dan Murphy’s store as one offering a large range of high quality liquor products.
- 92 In the opinion of the Police, the discounting strategies employed by the applicant do not accord with the Director’s policy on the responsible promotion of liquor.
- 93 Various studies demonstrate a correlation between larger volumes of liquor sold and higher rates of violence in a locality, and offering discounts in high volumes for cheaper products is not in the public interest as the impact of cheap alcohol on crime and social factors far outweighs the necessity to cater to the needs of the public (as expressed in the objects of the Act).
- 94 In addition, the Police question the commitment of Dan Murphy’s to not selling products that appeal to juveniles noting that it does sell some products which have the potential to appeal to minors (such as the product known as “Hot Pink”).
- 95 The Police also question the effectiveness of the applicant’s proposal to form a working group with “at risk” groups to address the potential impact on the “at risk” groups as there is no obligation, and it is unlikely the applicant would consent, to

cooperate and change their intended manner of trade if the service providers considered the trade was impacting on their services.

- 96 The Police observe that the survey conducted by the applicant is not representative of the locality, does not provide compelling and localised evidence of support and does not demonstrate support for the Dan Murphy's store.
- 97 The Police sought feedback from a number of liquor store owners, eight of whom expressed concern about the stifling of the industry by Dan Murphy's and First Choice stores in Western Australia. In the opinion of Police, the approval of these stores based on their manner of trade is "crushing diversity" in terms of impacting the smaller outlets (in stark contrast to the objects of the Act concerning diversity and proper development of the industry).
- 98 In the same vein, the Police highlighted commentary from Doctor Evan Jones of the Department of Political Economy at the University of Sydney to the effect: Woolworths (Dan Murphy's et al) and Coles-Myer (First Choice et al) are forming a potential duopoly and their discounting practices have stifled and affected both the independent liquor outlets and characteristics.

Submissions by Ms L Baker, MLA, Member for Maylands

- 99 Ms Baker's submission is in her capacity as a Member of Parliament representing the electorate of Maylands.
- 100 Ms Baker submits that the community (at least those who have made their views known to her) welcomes the redevelopment of the site and a new tavern, but 600 people have expressed their concern to her that the tavern is to be reduced in size and the majority of the redevelopment will comprise a takeaway liquor superstore.
- 101 Ms Baker refers to the findings of the National Drug Research Institute in 2007, and the Western Australian Parliamentary Education and Health Standing Committee in 2011, that outlet density should be measured and regulated on the basis of alcohol consumption or sales per capita, as different outlets, such as a bottle shop versus a hotel, create very different consumption patterns and different harm outcomes, such as patterns of violence.
- 102 In this regard, she notes that research has shown density of hotels is problematic in the inner city while liquor stores are more likely associated with violence in suburban areas.
- 103 There is insufficient evidence to support the applicant's claim that the majority of the public and consumers recognise the need for, and support, the Dan Murphy's store or that the applicant has identified the specific requirements of consumers as required by section 5(1)(c) of the Act.

- 104 Ms Baker also questions the representative nature of the sample of people who attended the open night and completed the feedback questionnaire and advises that Maylands residents have contacted her to say Maylands does not need a liquor store equivalent to ten ordinary liquor stores in size.
- 105 Consumers have the option to travel to the Morley or Hyde Park Dan Murphy's stores if they wish to take advantage of the lowest price guarantee and range of high-end products.
- 106 Community members including members of the Maylands Residents and Ratepayers Association have collected 474 responses in a survey on the proposed development, an overwhelming majority of whom (over 90%) felt the Dan Murphy's store is not in the public interest.
- 107 Further, 78 submissions and emails from community members in opposition to the Dan Murphy's store have been collated many of whom express their experience with, and/or concern about, antisocial behaviour of varying degrees and their concern that the Dan Murphy's store would only exacerbate these problems.
- 108 Ms Baker (and those of her constituents with similar views) is concerned the potential for crime and antisocial behaviour, which is already occurring around the Maylands train station and elsewhere, will not decrease despite Management's efforts within the premises.
- 109 In the view of Ms Baker, the applicant's statement of intent to establish a working group with particular institutions dealing with "at risk" groups shows "breathtaking ignorance of the existing community, the service providers in the area and the problems of alcohol-related violence and street drinking in Maylands". Ms Baker highlights the nine organisations in the locality working with people suffering from alcohol-related illness and the 13 churches all of which play some role in helping vulnerable people in the local community. She also points to the Crossroads Project (established and funded by the State Drug and Alcohol Office to tackle health and antisocial disorder issues in Maylands) which already has a reference group in place and expresses her doubt about whether any of the service providers have the time or resources to participate in yet another committee, particularly one set up to deal with a problem that comes from the aggressive advertising and mass retailing of cheap alcohol.
- 110 As examples of why the area is already a focus for problem drinking by people who use the service providers and why Dan Murphy's would add to the problem, Ms Baker details the work of 55 Central and the Crossroads Project and the view of the CEO of 55 Central that the Dan Murphy's store will detract from the programs offered to assist clients manage their addiction.
- 111 Maylands train station is a major suburban station used by residents, visitors, and vulnerable clients from the various service providers, as well as school children. Fare evasion, antisocial behaviour and violence are already evident and the community expects more problems will arise if the Dan Murphy's store proceeds as planned.

- 112 While the residents agree that the tavern is likely to attract more affluent residents from around the area, currently there are many low income, vulnerable and disadvantaged people living in the area. Ms Baker provided statistics of the number of the Homes West properties in the locality.
- 113 Ms Baker also considers that the price discounting undertaken by Dan Murphy's will increase the level of harm and ill-health, quoting the finding of the Education and Health Standing Committee:
- “The actions of Coles and Woolworths in retailing alcohol products do not match their stated positions in evidence to the Committee that they are responsible retailers of alcohol and committed to the responsible service and supply of alcohol”.

Submissions by McCusker Centre for Action on Alcohol and Youth (MCAAY)

- 114 The objection from MCAAY relates principally to the proposed conversion of the existing BWS bottle shop into a Dan Murphy's liquor store.
- 115 In the view of MCAAY, the Impact Review Report referred to, and relied on by, the applicant as evidence Dan Murphy's stores have not had a detrimental impact on harm or ill-health in the community should be given no weight as it has not been open to public scrutiny.
- 116 Whilst acknowledging that some form of redevelopment of the premises may be appropriate, that development must be carefully considered to ensure it does not contribute to harm in the locality.
- 117 MCAAY submit that the proposed Dan Murphy's store is an entirely different proposition to the existing store which will result in different impacts on the surrounding community.
- 118 Research shows that alcohol availability is strongly related to alcohol consumption and harms, assaults in particular. Packaged outlet density is positively associated with rates of assault, domestic violence, chronic disease and very heavy episodic drinking.
- 119 Despite high standards of responsible service of alcohol and harm minimisation, the harm related to packaged liquor is likely to occur away from the packaged liquor premises.
- 120 Research also shows that price of alcohol is a significant risk factor for consumption and in particular harmful consumption of alcohol and MCAAY is concerned that the introduction of a very large liquor store with a focus on selling liquor cheaply will increase alcohol-related harm in the surrounding community. MCAAY has provided some examples of Dan Murphy's promotions including the Woolworths Limited website description of Dan Murphy's as offering the “Lowest liquor price guarantee.

That means shoppers can have confidence when buying from a Dan Murphy's store they are receiving the lowest price".

- 121 There is a significant concern in the community about drinking patterns among young people with 94% of Western Australian adults expressing concern about alcohol use among young people in independent market research conducted by MCAAY in 2012.

Submissions by Reverend Albany

- 122 A Parish priest of St Luke's Anglican Church, Maylands, Reverend Albany supports the submissions of the local member, Ms Baker, and addresses the grounds of her objection collectively.
- 123 Reverend Albany and the church community he says he represents support the development of the tavern, but strongly object to the creation of the proposed Dan Murphy's takeaway liquor store.
- 124 Of particular concern is the potential for a lessening of the amenity of the locality, especially from itinerant drinkers attracted by the availability of inexpensive liquor.
- 125 Based on his 40 years of experience as a priest, Reverend Albany submits that the ready availability of inexpensive liquor is one of the significant contributors in problem drinkers over-indulging.
- 126 In the opinion of Reverend Albany, if the applicant were concerned to minimise the effects of problem drinking, they would not discount their cheaper lines, but rather sell them at a higher price and offer their premium wines at a lower price.
- 127 In Reverend Albany's view, the applicant has failed to properly research the nature of the locality and the vicinity of the tavern and the problems that occur there.
- 128 Reverend Albany also questions the claim in the PIA that the applicant has consulted widely with the community, in particular the statement in the PIA that the applicant has engaged Creating Communities to consult with relevant stakeholders and community members, including community groups in the locality. Reverend Albany is not aware of any such consultation by Creating Communities, certainly not with St Luke's which he suggests is a relevant community group by virtue of its services to the disadvantaged and vulnerable people, including the hosting of several weekly Alcoholics Anonymous groups.

Submissions by AFL Pty Ltd

- 129 The Licensee Objector has specified a number of grounds for its objection under section 74 of the Act and made submissions in support of each ground, including:

- a) Maylands is already well served with smaller local liquor outlets and the introduction of a Dan Murphy's store, which is equivalent to 2 to 3 more licences, will add pressure to tackling anti-social issues, will have a deleterious impact on existing outlets which provide distinct services and, among other things, will result in an increase in the price of liquor (to off-set loss of volume sales);
- b) based on available research, in general terms the greater the per capita alcohol sales made by liquor stores, the more likely that there are, or will be, greater levels of alcohol-related harm, and a number of characteristics of the Dan Murphy's store (and price competition policy) have the potential to sharply increase access to liquor;
- c) there is already evidence of existing levels of harm and ill-health occurring in the community;
- d) the principal purpose of the Tavern is for the supply of liquor and food for consumption on licenced premises and not the "creation" of a supermarket style of liquor store;
- e) the applicant has misrepresented many of the existing liquor outlets suggesting these stores do not provide expertise, product range or value for money;
- f) the proposed premises are located adjacent to a number of sensitive premises;
- g) there are existing levels of anti-social behaviour in the precinct surrounding the proposed premises and the proposed Dan Murphy's store will significantly reduce the amenity of Maylands (and cause undue offence, annoyance, disturbance and inconvenience to residents);
- h) the location of the Dan Murphy's store will lead to traffic congestion; and
- i) the grant of the application would constitute a misapplication of the Act because the applicant is attempting to establish a large format liquor store for which it should have made an application for a liquor store licence under section 47 of the Act.

Submissions by other Objectors (main concerns)

130 The main concerns expressed by other Objectors include:

1. Audex Sound (Mr V Bresland)

- a) The area is already subject to high levels of anti-social and alcohol-related behaviour.
- b) The area has been highlighted by the State Drug and Alcohol Office as an area of alcohol-related problems.
- c) The area has a high transient population.

- d) State and local governments should act on research into alcohol-related harms.

2. Mr M Perroni

- a) The application, if granted, will create increased hardship and strain on family values.

3. Ms M McArthur

- a) The licence should be beneficial to residents nearby, but the licensing hours should be to 11 pm only and noise should not be able to control the lives of others.

4. Maylands Ratepayers and Resident's Association

- a) Maylands is already experiencing street drinking and anti-social behaviour and a large liquor store near the railway station will encourage more people from other areas creating further problems.

5. Ms J Wheare

- a) People travelling from the North West of the State to receive medical treatment are already seduced by package liquor outlets – approval of a large liquor barn on the railway would be reprehensible.
- b) The proposed outlet will exacerbate already existing anti-social behaviour.

6. Mr J Duncan

- a) Unlike the previous development proposed for the site, the proposed redevelopment by the applicant is not consistent with the Maylands Activity Centre Urban Design Framework and there are already Dan Murphy's stores within reasonable driving distance.
- b) The proposal is a "car based shopping centre" which is outdated and doesn't reflect the aspirations for a vibrant, mixed use, modern lifestyle hub.
- c) The "big box" outlet will negatively impact property values (including that of the objector).
- d) Having owned the existing venue for over three years, the applicant has not shown any willingness to address problems that arise.
- e) Contrary to the applicant's claim, Ascot, Redcliffe, Bassendean and Guilford are closer (in terms of minutes driving) to an existing Dan Murphy's liquor store than the proposed store.
- f) The applicant did not notify residents of the proposal.

- g) The choice given to residents at the open night was “if they want to get rid of the existing “eyesore” ...they would need to support the Dan Murphy’s” proposal, which swayed their support for the proposal.

7. M T Koproski

- a) The proposed discount liquor store does not accord with the Maylands Activity Centre Urban Design Framework and is far better suited to an area with commercial or retail zoning.
- b) Most of the existing Dan Murphy’s stores are adjacent to two lanes of traffic in each direction and not close to private residences, but close to shopping centres and retail outlets – if this proposal goes ahead, this would be the first Dan Murphy’s in Perth to be on such small roads.
- c) The application, if granted, will give rise to further anti-social behaviour, which the objector has personally witnessed in the area.

Supplementary and further evidence

131 In July 2015, the Commission extended the deadline for further evidence and in response, the applicant, EDPH, Police and Ms Baker lodged additional submissions.

Supplementary evidence of the applicant

132 The further information provided by the applicant is intended to update information provided in the PIA and provide further details of the applicant’s business.

133 The applicant submits that packaged liquor is only one part of the hospitality services it provides in conjunction with taverns and hotels and that integrating alcohol and food is more in keeping with the Mediterranean drinking culture (that is, a culture in which alcohol is not the sole focus of an event or experience, but only part of it).

134 In support of this submission, the applicant highlights a number of similar upgrades to premises, such as the Highway Hotel in Bunbury developed at a cost of approximately \$8,970,000.00 split fifty-fifty approximately between the hotel and the Dan Murphy’s store.

135 The applicant acknowledges that it stocks many products in the low price point range, but points out the biggest number of wine products stocked is in the \$16.00 to \$24.99 range as evidenced from the table presented:

| | |
|------------------|-------|
| Less than \$7.99 | 7.7% |
| \$8 to \$11.99 | 14.2% |
| \$12 to \$15.99 | 17.6% |
| \$16 to \$24.99 | 31.4% |
| Over \$24.99 | 29.1% |

- 136 The largest price differential is in wine and premium products, with small margins and hence small price differentials on popular beers.
- 137 According to the applicant, customers are unlikely to travel long distances for small savings on single product purchases due to the added costs of time, energy and inconvenience.
- 138 The applicant highlights the success of the Dan Murphy's brand and submits that, based on the decision of the Supreme Court in *Woolworths Limited v Director of Liquor Licensing* 2013 WASC 227 ("the Dan Murphy's Bicton case") the reasons underlying the success of Dan Murphy's stores elsewhere can be accessed and applied to this application.
- 139 Given the length of time since the open night and the accompanying survey of attendees, the applicant engaged West Coast Field Services ("WCFS") to conduct a further 301 telephone surveys of residents in the surrounding area. Some of the results of the survey were highlighted by the applicant, including:
- a) 91% of all respondents said the tavern and associated bottle shop needed an upgrade;
 - b) 82% of respondents who had purchased liquor in the past six months thought the proposal to upgrade the premises with a new tavern and Dan Murphy's was a good idea.
- 140 Of those respondents who considered the development a good idea, 50% had no concerns, 18% indicated concern about social problems and only 5% were concerned about Dan Murphy's being part of the application (in fact, the survey did not provide as a response "a concern about Dan Murphy's being part of the application", but provided as a pro forma response "Large size of store" to which 9% responded; "Enough here already" to which 7% responded and "Lowest price guarantee/cheap alcohol", to which 4% responded – further, the report from WCFS on the outcome of the survey records the 5% response not as "a concern about Dan Murphy's being part of the application" but as "Dislike the Dan Murphy store/brand", which presumably is in addition to these other responses – Annexure E and F of applicant's Supplementary Evidence).

- 141 According to the applicant, Dan Murphy's will not drive the other smaller liquor stores out of business as evidenced by the 64% of respondents to the survey who purchase liquor who indicated they would continue to use their current store.
- 142 The applicant highlighted the typical Dan Murphy's customer as one with a higher disposable income who often purchases larger amounts for a function or for consumption over a longer period of time.
- 143 In 2012, 60% of customers were between 35 and 64 years of age with only 6% between 18 and 24 years of age.
- 144 The breakdown of the Dan Murphy's customer spending habits (proportion of sales) is split: 23% budget; 41% mainstream; and 37% premium. The makeup of the budget and premium sales is as follows:
- a) Budget: 42% beer; 22% wine; 24% spirit; 11% RTDs.
 - b) Premium: 24% beer; 56% wine; 18% spirit; 2% RTDs.
- 145 The average basket size is \$65.00, each containing 3.5 products or an average price per item of \$18.57 with "less than 1% of sales in Dan Murphy's (Nationally) from baskets that are under \$10.00".
- 146 In the applicant's view, the customer analysis demonstrates that the Dan Murphy's environmental features "discourage "at risk" drinkers from purchasing their alcohol at Dan Murphy's and that Dan Murphy's customers are generally higher income earners who want to sample different products or are catering for events".
- 147 Any representation of Maylands as a low socio-economic area is misleading and outdated.
- 148 The applicant submits that consumers are no longer driven by price, but instead are choosing to browse through more options which appeal to taste and quality preferences, and that browsing does not correlate to people drinking more.
- 149 The larger size of the Dan Murphy's store does not equate to the equivalent of another additional liquor store in the locality; it is necessary to provide the wide variety of product that makes the store unique (access to a wider variety and selection).
- 150 The applicant refers to a finding of a study of Australian and New Zealand drinking cultures undertaken by Dr Anne Fox in 2015, that the way people behave when under the influence of alcohol is directly influenced by social constructs, and that altering drinking culture is the best way to alter attitudes towards alcohol.
- 151 In the applicant's view, the findings of Dr Fox support other studies which show that in instances of alcohol-related violence it is not the alcohol which causes aggression – there must be aggression present in the individual or the cultural environment; alcohol does not create aggression where none existed previously.

- 152 Dan Murphy's is aiding to change this drinking culture by providing a premium liquor service and encouraging consumers to try different wines and enjoy drinking as part of an overall experience in keeping with the Mediterranean drinking culture recommended by Dr Fox.

Further supplementary evidence from Ms Baker

- 153 Ms Baker commissioned a market research company to conduct a survey, which while not a poll of the State electorate of Maylands, nevertheless, provides a very clear indication of the community's wishes in respect of this application.
- 154 In answer to the question: 'Do you believe a 1000m² liquor store at the Peninsula Tavern is in the public's best interest?', 19.7% responded 'yes', and 68.1% responded 'no'.

Further evidence from the EDPH

- 155 A statement from the Director at Shopfront, the drop-in and referral centre in close proximity to the premises, was provided by the EDPH advising, among other things, that Shopfront:
- a) engages two paid staff members and uses up to 60 to 70 volunteers;
 - b) sees on average 80 visitors a day; and
 - c) receives about 20,000 visits per year from approximately 3000 different individuals.
- 156 In the Shopfront Director's opinion, the factors that make alcohol use more likely for visitors at Shopfront are easy access and an attraction to cheap packaged liquor, and he is concerned that a Dan Murphy's store will increase the availability of cheap liquor and other stores may also lower their prices to remain competitive.
- 157 Based on the Shopfront Director's four years of experience working in Maylands, Maylands is a mixed area, with many low-income earners some of whom live in low cost high-rise flats, and some of whom visit Shopfront and are struggling with money and may be attracted to cheaper alcohol.
- 158 Some statistical data was also provided by the EDPH from the records of the WA Police relating to blood-alcohol levels and treatment episodes for persons where alcohol is a primary or other drug of concern.

Further and responsive submissions of the applicant

- 159 The provision of broad appeal of retail products and the culture of browsing through large varieties of products at very competitive prices is a contemporary culture shift in Australia which includes retail liquor products.

- 160 Not only is it impossible to establish positively that the proposed Dan Murphy's store will cause more harm, it is equally impossible to refute such a prospect. In the view of the applicant, it is all the more improbable that sensible, predictive conclusions about these matters can be distilled from general studies and observations – all one can say is that to the extent that the greater availability of alcohol by retail sale produces more harm, additional harm may eventuate in any location in which the retail availability of alcohol is increased.
- 161 The applicant acknowledges the concern regarding some sensitive premises, highlights its statements in the PIA and points to the "Interface Management Plan which deals expressly and superficially (sic) with these sensitive facilities and mandates supervision of the relationship between those facilities and the proposed Dan Murphy's, with open channels of communication available between those who manage the facilities and the senior management of the proposed Dan Murphy's".
- 162 In relation to the potential impact of traffic on the amenity of the area, the applicant points out that the proposal will generate less traffic than the previously endorsed proposal and likely alternative proposals for the site (if the application is not approved).
- 163 In response to the Police submission that the applicant has not demonstrated a consumer requirement in accordance with section 5(1)(c), it is submitted the statutory scheme (of the Act) does not require or so much as suggest the need to demonstrate a public need or requirement.
- 164 While consumer requirement is a factor to consider, there may be a public interest in a manner in the absence of a consumer requirement (as in a case where the public interest might be served by a development that does not as yet manifest in an overt consumer demand).
- 165 The applicant distinguishes other decisions of the Commission where the Commission has expressed the view it is not in the public interest to have large format destination stores in close proximity stating that each application must be assessed by reference to its particular circumstances, and that Maylands is a high density inner suburb in contrast to the localities such as Joondalup and Carine and has a wider trading area by virtue of the major road configurations.
- 166 The applicant acknowledges the research literature may be indicative, if not demonstrative, of the link between the availability of alcohol, particularly in large quantities and competitive prices, and social harm, but points out if that were determinative of the matter, no additional or expanded licences offering competitive prices would be granted. While such a conclusion about the link between the availability of alcohol and social harm is open to the Commission, the level of risk must be weighed and evaluated in all the circumstances against the other statutory objectives and the benefits likely to flow from the proposal.
- 167 The EDPH has observed that alcohol is readily available in the locality and the applicant points out that the refusal of the application will not ameliorate that reality. Rather, the applicant submits that the public interest is best served by the grant of

the application which “entails a development that fosters a very different culture and with a much greater focus on the management of disadvantaged and vulnerable segments of the population”. The Interface Management Plan, it is contended, provides the opportunity for Dan Murphy’s best management practices to extend beyond its premises.

168 In response to the Police submission that in characterising the Dan Murphy’s business the issue is not what Dan Murphy’s stocks but what it sells, this is not entirely so, as the character of the business is a product of many features including both stock and sales.

Further and responsive submissions of the Police

169 The Police submit that it is not correct to suggest there is a strong consumer requirement for a new liquor store and certainly there is no probative evidence to support the requirement for a tenfold expansion of the liquor retailing capacity of the existing BWS.

170 Further, the locality to be considered in this application, because the proposed Dan Murphy’s store is a destination liquor store, is wider and requires a consideration of the Dan Murphy’s Hyde Park and Morley stores. In the Police submission, the locality is currently serviced by other large format stores and the addition of another destination store so close to existing Dan Murphy’s stores would not only not contribute to, but positively detract from, the proper development of the liquor industry.

171 The Police submit in relation to their analysis that the sales data shows unequivocally that Dan Murphy’s:

[REDACTED]

[REDACTED]

[REDACTED]

172 As a consequence, the Police submit that opening a new Dan Murphy’s is likely to lead to a significant overall increase in the consumption of alcohol and consequently alcohol-related harm, and the harm is likely to be felt more acutely by heavier and younger drinkers who are more sensitive to price.

173 The Police highlight the significant level of serious and antisocial offending in Maylands noting an increase in the number of alcohol-related incidents over the last two years for which data is available (2012 and 2013).

174 These statistics, the Police maintain, are consistent with the anecdotal evidence gathered at the open night that Maylands has issues with alcohol-related harm.

175 Further, while the applicant may regulate behaviour on its premises, it cannot limit alcohol-related harm caused by persons with criminal or anti-social tendencies off

the premises or by such behaviour outside the premises, particularly in domestic settings.

- 176 In relation to the applicant's submission on price elasticity factors, the Police submit that given the likely significant price discounts offered by Dan Murphy's and the likelihood the clients of service providers are to be on limited incomes and sensitive to price, they are unlikely to be deterred from purchasing alcohol by the distance the clients have to walk to access the store.
- 177 The significant quantities of cheap wines that are favoured by vulnerable groups and problem drinkers will also be likely to be offered at a discount to surrounding liquor stores.
- 178 In its responsive submissions, the Police, submit:
- a) the positive contribution to the public benefit (that is the additional benefit the proposed development will bring to the people of the locality beyond what is now available) is, at best minimal;
 - b) the opening of the Dan Murphy's store would oblige all other liquor stores to compete thereby lowering the economic availability of liquor for the location as a whole and resulting in an increase in harm suffered by "at risk" groups;
 - c) of the sizeable proportion of disadvantaged residents, a number live in large apartment complexes within between nine and 21 minutes walking distance from the premises;
 - d) the Dan Murphy's business model is to cater for the existing drinking culture by selling very large quantities of commonplace liquor at cheaper prices and rather than change cultural attitudes the Dan Murphy's store would exacerbate an existing problem by flooding the locality with cheap liquor - stocking a broader range, including liquor at medium to high prices, does not change this fact; and
 - e) the Interface Management Plan is vaguely worded and does not appear to be binding on the applicant, and there are negative externalities associated with a large discount liquor store that the applicant cannot control or minimise.

Further submissions by MCAAY

- 179 In response to the supplementary evidence submitted by the applicant, MCAAY submits:
- a) a recent publication suggests the consumption of alcohol in Australia has increased in recent years;
 - b) the Impact Review Report cannot be relied upon;

- c) the report and conclusions drawn from the study by Dr A Fox should be given no weight as it conflicts with substantial literature of peer-reviewed evidence which points to the important contribution of price, trading hours and advertising to alcohol consumption and harms;
- d) Dan Murphy's has a promotional focus on low cost alcohol through the tagline "lowest liquor price guarantee" and to suggest that Dan Murphy's is helping to change Australia's drinking culture in a positive way has little merit and is disingenuous at best;
- e) Dan Murphy's can be expected to be associated with a significant increase in patronage over that of the existing BWS bottle shop giving rise to different impacts on the surrounding community; and
- f) recent research based on alcohol-related injuries presenting at emergency departments in Perth has found higher alcohol sales among off-premises outlets are associated with increased risk of alcohol-related injury, possibly because of the sizeable discounts and other incentives larger outlets are able to offer.

Further and responsive submission by EDPH

180 The EDPH refutes the applicant's submission that it is improbable that sensible, predictive conclusions can be made about the Dan Murphy's store causing more harm based on general studies and observations and submits that the evidence and submissions provided by the EDPH outline, in a methodical manner, the conclusions open to the Commission on the likelihood of increased risk of alcohol-related harm and ill-health based on such evidence.

181 The EDPH summarises the research and other evidence presented to the effect:

- a) there is a relationship between alcohol availability and alcohol related harm;
- b) the Dan Murphy's store will sell more alcohol than the BWS store;
- c) Dan Murphy's stores trade predominantly in low cost alcohol;
- d) the Dan Murphy's brand positioning creates an image that Dan Murphy's will be cheaper than any other liquor store or outlet;
- e) the lower the price of alcohol, the greater the likelihood consumption will increase, especially among those on limited incomes;
- f) the design of the Dan Murphy's stores leads to unplanned and impulsive purchasing, customers purchasing more and customers consuming alcohol in greater amounts;

- g) impulsive purchases are more likely to be consumed in a high risk fashion and “at risk” groups are highly susceptible to impulsive behaviour;
- h) the “at risk” groups in this community, such as, young people, Aboriginal people, persons from low socio-economic backgrounds, persons with alcohol and drug related dependency issues and the clients of the number of service providers in the proximity of the proposed Dan Murphy’s store and in the locality, are particularly vulnerable to harms associated with cheap and readily available alcohol;
- i) “at risk” groups in this locality use alcohol to self-medicate and alcohol is the drug of first choice and most problematic substance for clients of the various service providers;
- j) the marketing and brand positioning of Dan Murphy’s as a provider of the lowest cost alcohol is likely to be a more significant purchasing consideration than any inconvenience that may be experienced by, for example, an extended journey to the store;
- k) a number of clients of the “at risk” service providers travel by train and the proximity of the Dan Murphy’s store to the train station will increase the likelihood of impulsive purchases of alcohol;
- l) alcohol-related harm in the form of alcohol-related and non-alcohol-related domestic assaults already exists in the locality and is increasing overall;
- m) packaged liquor sales are a particular risk factor for domestic violence, malicious damage to property and offensive behaviour;
- n) the majority of drink driving charges in some suburbs in the locality, including Maylands, involved drinking packaged liquor; and
- o) there is a high extant rate of alcohol-related harm in the locality measured by treatment episodes (where alcohol is the drug of primary concern and drug of concern) and hospitalisation rates.

182 The work of Dr A Fox, which has been publicly criticised by credible Australian academics on numerous bases, should be treated with caution. It is questionable whether amelioration of alcohol-related harm by virtue of any purported “culture change” as a single strategy is likely to occur at a rate or level of effectiveness, which would satisfactorily offset the increased rate of alcohol-related harm or ill-health caused by the increased supply of alcohol in this particular locality.

183 While the close proximity of the train station may reduce some alcohol-related harm, particularly resulting from “drink driving”, this cannot be said of the Dan Murphy’s store.

184 The Interface Management Plan is relatively aspirational in nature and does not detail what practical measures will be taken to address “at risk” persons attracted to features of the premises, such as its lowest price guarantee (other than an intention to be consultative).

Determination

185 Pursuant to the Director’s determination and section 38(2) of the Act, the applicant must satisfy the licensing authority that granting the application is in the public interest.

186 To discharge its onus under section 38(2) of the Act, the applicant must address both the positive and negative impacts that the grant of the application will have on the local community.

187 Determining whether the grant of an application is “in the public interest” requires the Commission to exercise a discretionary value judgment confined only by the subject matter and the scope and purpose of the legislation (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).

188 The Commission also notes the words of Tamberlin J in *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 where he said:

“The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.

The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.”

189 Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (*Palace Securities Ltd supra*).

190 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*

- (c) *to cater for the requirements of consumers of liquor and related services with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.*

191 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 requirements of consumers in the State; and*

[(b), (c) deleted]

- (d) *to provide adequate controls over, and over the person directly or indirectly involved in, the sale, disposal and consumption of liquor; and*

- (e) *to provide a flexible system with as little formality or technicality as may be practicable.*

192 Section 33(1) of the Act gives the Commission an absolute discretion to grant or refuse an application on any ground or for any reason that it considers to be in the public interest. The scope of this discretion was considered by EM Heenan J in *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 [32]:

“[Section] 33(1) is 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”.

193 Each application must be considered on its merits and determined on the balance of probabilities pursuant to section 16 of the Act. 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 (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WACA 258).

194 The new facilities to be developed by the applicant are proposed to be “a family friendly community tavern with a focus on the provision of meals and a liquor store that offers a wide variety of choice for browsing customers” to suit the changing demographic of the locality, which has been described by the applicant as becoming increasingly “gentrified”.

- 195 The benefits of the proposed redevelopment have been described (in the open night brochure) as follows:
- a) a transition from the current outdated venue to a new high quality modern, family-friendly bistro;
 - b) elimination of risk factors associated with the current venue, including improved design of safety features and full security upgrade to the redevelopment;
 - c) increased amenity to the area adding to the evolving local precinct which is developing in the area;
 - d) provision of a high end packaged liquor store committed to responsible management;
 - e) reduced closing time from the current 12.00 midnight closing time on weekends for the BWS store to 9.00 p.m. for the Dan Murphy's store;
 - f) employment opportunities;
 - g) elimination of drive-through access to the liquor store; and
 - h) development of facilities including the bistro, liquor store, car park and landscaping that better integrate the surrounding neighbourhood and effectively manage traffic flow and access.
- 196 The applicant presents itself and its business model as a hospitality operator specialising in pub operations such as a bar, food, accommodation, functions and entertainment and retail liquor sales, with an emphasis on the integration of these services into one venue, which provides economies of cost and scale (Chief Operating Officer, ALH Group Pty Ltd).
- 197 According to the applicant, the new tavern will cater to a more sophisticated market, providing a "classier venue and catering to the growing demand for premises that provide a wide selection of wines and food options".
- 198 The proposed redevelopment is less of a mixed use development than was proposed by the previous owner of the site, and the detail and extent of the concern expressed by the State Joint Development Assessment Panel that the development of the site should comprise a wider range of uses (than currently proposed by the applicant) and the resolution of that particular concern is not apparent from the evidence.
- 199 Nevertheless, the redevelopment has been approved by the local authority.
- 200 Despite the concerns of Mr Duncan and Ms Koproski about the failure (in their view) of the proposal to conform with the Maylands Activity Centre Urban Design Framework, there appears to be a general consensus among most of the parties to, and persons who have made submissions in, these proceedings that the redevelopment of the existing tavern is desirable and would be beneficial to the

community. Notwithstanding the propensity for a wide range of views to be expressed in any application, and the views expressed by Mr Duncan and Ms Koproski in this application, it perhaps would be surprising if the proposed new tavern was not supported given the existing tavern is said to be outdated and in need of upgrading.

- 201 However, as the proposal comprises both the redevelopment of the existing tavern and the introduction of a Dan Murphy's liquor store (considerably larger in scale and substantially different in operation to the present premises and business), it is necessary to consider the application as it applies to the premises as a whole.
- 202 In this regard, the applicant has indicated that if the modification to the liquor licence to accommodate all of the proposed development is not successful, the venue will continue to operate in its current form (this is stated in the open night Information Sheet and was confirmed at the Commission hearing).
- 203 The National General Manager of Dan Murphy's has stated that: "the style of Dan Murphy's retailing usually means the stores are located in positions that are integrated with, or near to, other retail shopping services and facilities...The ideal location of a Dan Murphy's store is in a free standing site, that is, in the car park of, or associated with, a major shopping centre, with ground level car parking and located off a main road".
- 204 This statement needs to be considered along with another of the General Manager that: "By design, Dan Murphy's is a destination store. Customers typically drive to Dan Murphy's for a specific purpose, such as to purchase liquor for an event, or to find a particular product that is not available elsewhere. In short, they have made a deliberate choice to come to Dan Murphy's. Having said that, where our stores are located next to, or form part of, a shopping centre, Dan Murphy's also provides a facility for a one-stop shopping experience".
- 205 The premises are located on the western side of the Midland railway line separated from the main part of the Maylands town centre and, in the Commission's view, could not be said to be integrated with a retail shopping centre, or in sufficiently close proximity to a wide range of retail services and facilities to characterise the premises as forming part of a one-stop shopping experience.
- 206 Much has been made in the applicant's submissions of the closeness of the proposed Dan Murphy's store to arterial roads to and from the Perth CBD and there is little doubt in the Commission's mind that the proposed store is a destination liquor store.
- 207 It is not clear to the Commission what benefit the Dan Murphy's store adds to the redeveloped tavern (for example, in providing a wide choice of wine, beer or other products). There is little or no direct evidence of the extent to which this either forms part of the business plan for the new development (other than a general statement the applicant's emphasis is on the integration of hotel/tavern and liquor store services into one venue) or is evident at other premises comprising a tavern/hotel and Dan Murphy's liquor store.

- 208 In assessing the public interest, regard must be had to the primary and secondary objects of the Act, as well as section 38.
- 209 The applicant has submitted that the public interest is not to be assessed by the limited evidence regarding surveys and the adequacy of other stores in the locality, but acknowledges they are factors to be taken into account.
- 210 In the PIA, the applicant states that, in order to satisfy the public interest test (and the objects in the Act), the applicant completed research, engaged various experts and conducted community consultation.
- 211 Creating Communities was contracted by the applicant “to manage the open night and to take charge of gathering community feedback – to ensure that community and stakeholders had the opportunity to provide their opinion on the proposed development”. (Creating Communities Report, page 4).
- 212 The open night brochure indicated that the applicant “is considering all community feedback regarding the development to ensure the planning and decision making is responsive to community needs and aspirations”.
- 213 An invitation letter was delivered to 1500 residents living in close proximity to the premises, local businesses and local dignitaries and key stakeholders. Of the 1500 invitations, 141 people attended “at some point” during the open night, 85 survey sheets were completed and some anecdotal evidence gathered.
- 214 The majority of respondents were residential property owners who own a residence facing the site, within a few streets of, but not facing, the site or elsewhere in the City of Bayswater or City of Vincent.
- 215 Three (3) were “interested stakeholders” who do not own a residence or commercial property.
- 216 The identities of the respondents to the feedback survey are not known and were not sought (unless the respondent wanted a project team member to make contact regarding the respondent’s comments). The identities of the attendees are also not known.
- 217 The majority of respondents to the survey expressed support for the modification to the current liquor licence which would allow the redevelopment to proceed.
- 218 The survey results reveal, among other things:
- a) a very low percentage of respondents use the tavern once a week, and a slightly higher number might use the new Bistro once a week, but a significantly higher number would use the new Bistro once every 4-6 months or more frequently;
 - b) a very low percentage of respondents use the BWS bottle shop once per week, and a slightly higher number might frequent the Dan Murphy’s store once a week;

- c) a very much higher number of respondents use the BWS bottle shop once every 4-6 months or more frequently and an even higher number might use the Dan Murphy store that frequently.
- 219 The main benefits of redeveloping the site (which were specified in the survey) were considered by respondents to be better premises, better food, employment and a community hub, in that order.
- 220 A number of concerns about the proposed development were also evident from the survey. Again from a number of pro forma responses provided in the survey, respondents identified the following concerns: large store (33 or 39%), potential harm from liquor (23 or 27%), cheap alcohol (22 or 26%) and other (18 or 21%).
- 221 Although the majority of respondents supported the proposed redevelopment, respondents were not asked whether they supported all aspects of the development or why they supported the redevelopment.
- 222 In summarising the findings, Creating Communities also commented:
- a) Under the heading, "Current vs Potential Usage of the Bottleshop":
- a) *Of those respondents who said they would visit the proposed Dan Murphy's, the primary reason for doing so was a wider range and lower prices. Of those respondents who said they would not use the Dan Murphy's, the primary reason was that they choose to support locally owned liquor stores instead.*
- b) Under the heading, "Issues":
- a) *There was some negative sentiment to the development of a larger bottle shop premises particularly in relation to the increased ease of access to cheap liquor and the impact this may have on anti-social behaviour.*
- b) *Over a third (39%) of respondents identified the proposed large Dan Murphy's Liquor Store as an issue/concern and 27% of respondents identified potential harm from liquor as an issue/concern. Respondents commented that a bottle shop of that size is not needed in the area and could have negative impacts on the community.*
- c) *Respondents to the survey commented that the design of the new Bistro and bottle shop should better reflect the heritage of the area and concern was also raised regarding the potential for traffic congestion.*
- 223 Independent, objective and properly constructed and conducted surveys, whilst by no means determinative of the requirements of consumers for liquor and related services, are, nevertheless, helpful in providing the Commission with an insight into, and placing some context from a community perspective around, the attitudes and expectations of consumers of liquor and other members of the local community affected by an application (having regard to the proper development of the liquor,

tourism and hospitality industries, and the diversity of the requirements of consumers in the State).

- 224 For example, the survey conducted as part of the open night, while a small and not necessarily representative sample of the community and locality, suggests that the redevelopment of the existing premises is supported (at least by some property owners in close proximity to the premises, although which components of the development are supported, and why the apparent support was forthcoming is less clear), and, at the same time, that a significant number of residents have concerns about the size of the Dan Murphy's store and the potential harm and negative impacts in the community.
- 225 It is not clear if, and if so, how and to what extent, the applicant responded to this community feedback "to ensure the planning and decision making is responsive to community needs and aspirations".
- 226 It also appears the extent of the stakeholder engagement may have been confined to formal notification of the proposed development and an invitation to the open night, and that the nature and type of engagement recommended by Creating Communities (Creating Communities Report, Recommendations, page 22; see [53] above) is yet to occur, but is proposed (in the form of an Interface Management Plan and Operational Management Plan).
- 227 Unfortunately, if meaningful engagement has occurred there is no evidence of which stakeholders and community groups were consulted, how and why they were selected, and what the outcomes were of the engagement and consultation.
- 228 If the extent of the engagement is limited to the open night, only three of the 85 respondents to the survey were "interested stakeholders" and nothing is known about those stakeholders.
- 229 The importance of community and key stakeholder engagement cannot be overemphasised, particularly in relation to an application of this nature. A meaningful and expansive engagement with key stakeholders and "at risk" groups within the local community affected by an application of this magnitude assists the Commission assess the potential social and economic impacts of an application, and the potential for any increase in harm or ill-health and how that potential harm might be mitigated.
- 230 Some 15 months or so after the open night, the applicant conducted a further survey "given the length of time that has passed since the initial community survey". The second survey, more expansive than the first, was conducted by West Coast Field Services ("WCFS") although it appears the survey was not designed by WCFS, but by solicitors acting for the applicant with input from WCFS, and involved 301 telephone surveys of residents in Maylands and surrounding suburbs.
- 231 An overwhelming majority of respondents to that survey believe the existing tavern needs an upgrade. Three quarters of those surveyed think the proposed upgrade is

a good idea principally because it will provide better/upgraded premises and a welcoming environment.

232 Of those who think the proposal is a bad idea (50 out of 301 or 17%), 32% gave as a reason “social problems/encourages drinking”, and 30% “enough liquor stores in the area already”.

233 Of the respondents who think the proposal is a good idea, 50% have no concerns and the other 50% have concerns such as: (in order of most concern) social problem/encourages drinking, increased traffic – no parking, large size of store, and enough liquor stores already. Of those who would be likely to visit the Dan Murphy’s store, most would do so as a specific trip to the store.

234 The applicant highlights in its supplementary evidence in relation to the survey that:

- a) only 97 of 238 (or 41%) of respondents were extremely satisfied with the product range offered at their current liquor store; and
- b) only 57 of 238 (or 24%) of respondents were extremely satisfied with the prices at their current liquor store,

and goes on to say that Dan Murphy’s, which is known for its large range of products and lowest price guarantee, would meet the need in the locality for a greater range of liquor products at better prices.

235 However, the results of the survey also reveal:

- a) 74% (or 176 of 238) are NET satisfied with their main liquor store’s ease of parking;
- b) 84% (or 199 of 238) are NET satisfied with their main liquor store’s product range;
- c) 94% (or 223 of 238) are NET satisfied with their main liquor store’s service; and
- d) 83% (or 199 of 238) are NET satisfied with their main liquor store’s prices.

236 Further, whilst 55% (or 131 of 238) would be likely to use the new Dan Murphy’s store, 64% (152 of 238) would be likely to continue to use their main liquor store.

237 These results suggest that the locality already contains comprehensive liquor services and that collectively it has an extensive range of products sold at relatively competitive prices.

238 It is noted that the survey is also skewed towards what the applicant submits is the typical Dan Murphy’s customer, and is not representative of a cross section of the community. For example, the age groups 18-24 years and 25-29 years represent only 6% of the sample, yet in the MGA Report (Table 4) the age group 20-29 years is the highest in the locality and in Maylands (at 19.4% and 25.3% respectively). Simply because a group, and in this case a dominant group, is not considered to be

a *significant* proportion of the target market, does not mean they are not as relevant, as other segments, in assessing the attitude and support, or otherwise, of a representative cross section of the community. It also conflicts to an extent with the applicant's statement in the PIA that the increase in young professionals and families living in the locality has altered the entertainment and amenity needs in the area.

- 239 The surveys appear to the Commission to suggest some support from some in the community, but not a representative cross section of the locality, for the redevelopment of the site, and the upgrading of the tavern. However, support for the Dan Murphy's store is less clear and to the extent there may be some support for the new store that support would appear not to be because of any dissatisfaction with the current level of liquor store services in the locality.
- 240 The applicant has submitted that the Commission ought to examine the notorious success of Dan Murphy's stores in other locations and the reasons for that success, and to draw its own inferences that such a store would be similarly successful in this locality. The applicant refers to the Dan Murphy's Bicton case in support of its submission.
- 241 In the Commission's view, the requirement of consumers may differ depending on the characteristics of the locality and the local community.
- 242 Simply because a particular type of premises may be a requirement of consumers for liquor and related services (with regard to the proper development of the liquor, tourism and other hospitality industries) in one locality does not, of itself, mean it is a requirement of consumers for liquor and related services in another locality.
- 243 While the Supreme Court has pointed out that the Commission must have regard to the "notorious fact" that Dan Murphy's is successful in other localities, the requirement of consumers for liquor and related services is not a matter to be considered in a vacuum or without regard to the particular circumstances of the locality under consideration.
- 244 It is important to note when considering the Dan Murphy's Bicton case that the Court found the Commission had misconceived its function and misconstrued the Act because it appeared, based on the Commission's reasons, that the Commission found no negative aspects of the application and made no adverse findings in respect of the evidence proffered by the applicant on the positive aspects of the application (see Martin CJ). As a result, the Court found there was no basis upon which the Commission could reject the application.
- 245 Whilst there are some similarities between the two applications, the present application differs from the Dan Murphy's Bicton case in some important respects, including:
- a) the two surveys conducted by the applicant and the other evidence of affected parties, from which some assessment may be made about the views and

expectations of persons in the locality and affected by the outcome of the application;

- b) the demographics and nature of the locality;
- c) the presence of “at risk” groups in the locality, a matter of considerable importance in the present application;
- d) the location of the Dan Murphy’s store, which in the present application is not adjacent to a large supermarket or wide selection of retail outlets, but rather is separated from the main part of the Maylands town centre by the main railway line; and
- e) the Dan Murphy’s stores in relatively close proximity to the proposed store (i.e., Dan Murphy’s Hyde Park and Morley).

246 Unfortunately, the extent to which the applicant expects the proposed Dan Murphy’s store to be supported by consumers of liquor from outside the locality relative to consumers from inside the locality is not evident, either for the proposed store or for the Dan Murphy’s stores in other localities.

247 However, much emphasis has been placed on the importance of the location relative to the arterial roads of Guilford Road, Railway Parade and Beaufort Street.

248 The Commission infers from the evidence that a significant level of patronage of the Dan Murphy’s store would come from outside the locality.

249 Given the complexity of the road system servicing the proposed store, in particular, the roads crossing the railway line at Eighth Avenue and Caledonian Avenue, and the heavy volumes of traffic utilising the arterial roads, the proposed Dan Murphy’s store is likely to create significant traffic issues.

250 The applicant has submitted a Traffic Review (conducted by Riley Consulting) and submitted that the proposed development will generate less traffic than the previous endorsed proposals for the site or future proposals should the current proposal not proceed.

251 Nevertheless, the development of the site, as proposed, is expected to generate 1538 vehicle movements per day (vmpd), a 47% increase over the present day activity at the site. The expected make up of those traffic movements is 424 vmpd to the tavern (down from 660 vmpd) and 1114 vmpd to the Dan Murphy’s store (up from 388 vmpd for the bottle shop). In total, nearly three quarters of the traffic movements will be directly to, and from, the proposed Dan Murphy’s store.

252 Even though the local authority would be expected to have considered the potential impacts of traffic on the local community and road network, no evidence of substance has been presented other than the traffic assessment referred to.

- 253 In the Commission's view, an increase in traffic movements of 47%, all of which and more, would be to, and from, the destination Dan Murphy's store, is likely to have a negative impact on the amenity of, and bring marginal benefit to, the locality.
- 254 The Commission is not persuaded that, because the Dan Murphy's store does not have drive-through access, traffic would be reduced in the area (PIA section 15.2) or that there is sufficient, if any, evidence to suggest the early closing would "reduce a lot of the late night traffic issues" (PIA section 15.2).
- 255 There is some evidence that the proposed upgrade of the tavern would create a community hub (survey and PIA) and a place that will provide a much needed community space (PIA).
- 256 In this respect, while the redevelopment will certainly be an improvement on the existing facilities, this fact needs to be considered along with the fact the premises are separated from the main part of the town centre, which comprises many more retail shops, restaurants and mixed businesses.
- 257 In the Commission's view, the singular tavern (having regard to the fact the Dan Murphy's store is a destination venue) is unlikely to create a community hub in the sense of being a major and central meeting place for the wider local community. It will add to the stock of food and beverage outlets in the locality and provide a social facility for those living in the surrounding area and in the locality.
- 258 The proposed development is said by the applicant to be directly consistent with the objectives of the Maylands Action Centre Urban Design Framework. It is worth examining each objective to assist in an assessment of the benefits the proposal brings to the community:
- a) *reinforce and enhance economic activity and facilitate business synergies* – apart from general statements about the multiplier effect, no other economic analysis or information has been provided to assist in assessing the possible flow-on effects from the proposed development, and it would be speculative to conclude that the development will lead to future development of benefit to the community, if only because of the fact that, apart from the area either side of the premises, the surrounding area is zoned residential;
 - b) *minimize car dependency and promote public transport* – as is evident from the traffic analysis, the proposed development will be more, not less dependent on private transport;
 - c) *encourage redevelopment of under-utilised sites* – the proposed development is a redevelopment of an aging premises and, arguably, an underutilised site, although it might be said a redevelopment of the tavern and existing bottle shop, without the introduction of a Dan Murphy's store, would be an appropriate use of the site;
 - d) *encourage quality architectural and mixed use outcomes* – the *architectural* design could be said to be an improvement, but in terms of a mixed use outcome

the use of the premises is similar to the existing use and not as an extensive mixed use development, for example, as that proposed by the previous owner of the site;

- e) *encourage employment opportunities* – the proposed development certainly achieves this objective, albeit that there is no certainty that the employment generated will be sourced from within the local community.

259 Furthermore, the main focus of the Maylands Activity Centre Urban Design Framework development plan, at least for restaurants, cafes and shops, appears to be centred around Eighth Avenue on the eastern side of the railway line with the proposed uses on the western side to be a combination of residential, home based businesses and small offices. Although speculative (because there is no direct evidence), the potential flow on effects from the proposed development may, therefore, be relatively limited.

260 The proposed development is also said to achieve the objectives of a Maylands District Centre Zone which is designed to service the daily and weekly needs of local area residents. In this respect, it is said the typical retail services found in such a centre include discount department stores and supermarkets and that as Dan Murphy's is similar in nature to a supermarket, it would be an appropriate premises in the District Centre (PIA 3.2)

261 However, apart from the fact a liquor store is a very different proposition to a retail department store, the premises are on the periphery of the Maylands Activity Centre Zone (in fact the City of Bayswater brochure shows the Peninsula Tavern site outside the zone, although within a Special Control Area) in an area zoned medium and high residential. It is not in close proximity to other retail outlets and supermarkets, is not conducive to "one-stop" shopping and in so far as Dan Murphy's is concerned is a destination store where people come and go without necessarily or typically utilising other commercial and public facilities in the town centre.

262 The Dan Murphy's stores are presented as stores offering a combination of a great product range (over 3500 products), well trained staff (able to advise on food pairings and cellaring) and a lowest price guarantee. The large size of the stores is said to be necessary to accommodate the huge range of product and to display such product in a way that is appealing to browsing customers.

263 The applicant submits that much of the product is premium wines, with 60% of the wine products sold at price points over \$25 (including 24% of products priced at over \$100) and that the Dan Murphy's business model is not to sell cheap wine, but rather to offer its customers the best value for money when purchasing high quality wine (Part 1, section 7 of the PIA).

264 The business model and characterisation of Dan Murphy's has been the subject of much analysis and expansive submissions both before, and at the Commission hearing.

- 265 The business model, brand positioning and actual sales of the Dan Murphy's stores is relevant as it assists the Commission in assessing:
- a) the nature of the proposed store relative to other liquor stores in the locality and the added benefit it provides to the community;
 - b) the potential impact of the store on the levels of harm and ill-health in the community, particularly the harm and ill-health that may be caused to "at risk" groups; and
 - c) to an extent, the credibility of the applicant in its commitment to minimise the adverse impact of alcohol consumption in the community.
- 266 In the Commission's view, having regard to the financial analysis of the sales data undertaken by the Police, the characterisation of the Dan Murphy's model by the applicant as one that "is not to sell cheap wine, but rather to offer its customers the best value for money when purchasing quality wine" is not helpful in the context of this application.
- 267 The applicant has contended in response to submissions made by the Police on the sales data, that:
- a) Dan Murphy's sells considerably more products at a higher price point than BWS stores;
 - b) a minority of Dan Murphy's sales are of products less than \$█;
 - c) a significant proportion of Dan Murphy's sales are premium or more expensive products, and a not insignificant proportion are very expensive;
 - d) there is no foundation for the assertion that Dan Murphy's "predominantly sells cheap liquor".
- 268 It is sufficient to highlight the following analysis conducted by the Police to provide context to the Police submission that Dan Murphy's does predominantly sell cheap liquor:
- In FY 2013 / 14, in terms of total wine sales in Dan Murphy's stores:
 - a. █% of all wine sold at Dan Murphy's Midland was sold at below \$█;
 - b. █% of all wine sold at Dan Murphy's Morley was sold at below \$█;
 - c. █% of all wine sold at Dan Murphy's Balga was sold at below \$█;
 - and
 - d. █% of all wine sold at Dan Murphy's Hyde Park was sold at below \$█.
 - It is also worthy of note that of the four Dan Murphy's stores for which data was analysed, beer makes up a significant proportion of sales, especially at Dan Murphy's Midland, as does low cost wine, most particularly cleanskin wine, selling between \$█ and \$█.

- Further, leaving aside beer, none of the top 10 products at Dan Murphy's Balga sells for more than \$█.

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270 If measured by the volume of liquor sold, in those localities for which sales data was analysed, it would seem that beer and cheaper wine, rather than a wider range of premium wines is important to the operation of the Balga, Midland and Morley stores. █

█ █ █ █ █.

271 Certainly, range and the ability to browse may be important to the operation of a store, and premium wines, of which there may be a large range, would not be expected to sell in large quantities. Nevertheless, the significance of a wide range of wine, and premium wine, particularly to consumers in these localities would appear to be considerably less than might be concluded from some of the statements in the PIA.

272 Furthermore, as indicated above, although some respondents to the various surveys have indicated they will utilise the Dan Murphy's store, it is clear from the second survey conducted by the applicant that respondents are satisfied with the range, parking, service and price of products at their existing liquor store – there are eleven (11) licensed venues that sell packaged liquor within a 2 km radius.

273 To the extent that the Dan Murphy's store offers a different product range, price and service to other liquor stores, this choice is already available to people living in the locality at the nearby Dan Murphy's stores of Hyde Park and Morley. Certainly, another store would add an element of convenience, but as the Commission has stated in previous decisions (see LC 18/2015), convenience, of itself, is not necessarily a basis for the grant of an application.

274 The inconvenience of driving a short distance in the car to a Dan Murphy's store, which is a destination venue in any event, could not be considered to be significant. Even accepting the submission of the applicant that Maylands is a high density inner city suburb suited to "district and higher order shopping centres" with "a trade area population of over 40,000 persons", persons residing within, and outside, the locality will mostly be driving to the proposed store for the specific purpose of acquiring liquor and will not be frequenting other supermarkets or retail outlets at the same time.

275 The applicant's response to this submission made on behalf of the Police at the Commission hearing was to point out that the benefits of the proposed development are not simply those conferred on people with a car, which is, of course, correct. However, there is no doubt the proposed store is a destination store and is a store that will be frequented, in the main, by people in their car. This fact is not, of course,

determinative, but simply demonstrates the point that the level of inconvenience to travel to an existing store is by no means significant.

- 276 The demographic profile of the locality was also the subject of much analysis by the respective parties. In the Commission's view, the profile can best be summarised as comprising a mix of relatively affluent residents and a not insignificant proportion of disadvantaged residents with a relative high number of rental properties, some in the form of large apartment blocks in relative close proximity to the premises, and a relatively high number of Homes West properties across the locality.
- 277 Although the demographic profile of each locality is unique, as the purchasing habits of consumers and trading experience of Dan Murphy's stores have many similarities in those suburbs for which sales data has been examined, it is reasonable to infer that the experience in this locality will not be markedly different and may be used as a guide.
- 278 Having regard to the sales data of the Dan Murphy's stores for the suburbs of Balga, Midland and Morley, many of the people living in the locality would not be attracted to the Dan Murphy's store by the wide range of premium wine and, arguably, would see the proposed new store as offering similar products to their existing liquor stores, but at a lower price. In this respect, while the proposed store would add more diversity, because of its wider range of products particularly, the significance of that diversity to the population of the locality is questionable.
- 279 The Commission is not persuaded that the proximity of the railway line to the proposed tavern and liquor store is of any measurable benefit to the community. There is no evidence people will travel by train to, and from, the tavern in any great numbers and it certainly cannot be said that the railway line will result in any reduction in harm that may be attributable to the Dan Murphy's store.
- 280 In summary, on the evidence presented, there is support for the redevelopment of the tavern, which considered in isolation, could be regarded as a requirement of consumers having regard to the development of the liquor industry. However, the application must be considered as a proposal comprising not only the redevelopment of the tavern, but also the introduction of an entirely new Dan Murphy's liquor store, and the Commission is not persuaded there is an overwhelming or strong requirement of consumers for liquor and liquor related services in the locality in the form of a liquor store of the size and nature, and operating in the manner, of the Dan Murphy's store proposed.
- 281 In the exercise of weighing and balancing the various objects of the Act, in particular the objects of catering for the requirements of consumers for liquor and related services and facilitating the use and development of licensed premises on the one hand, and the object of minimising alcohol related harm or ill-health that might be caused to people or any group of people due to the use of liquor on the other, the approach referred to by Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 is an important precedent, namely to:

- make findings that specifically identify the existing level of harm or ill-health in the relevant area, in this case Maylands and the locality;
- make findings about the likely degree of harm to result from the grant of the application;
- assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- weigh the likely degree of harm so assessed together with any other relevant factors to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the application.

282 It is also important to bear in mind the comments of Wheeler J in *Executive Director of Public Health v Lily Creek International Pty Ltd* [2001] WASCA 410 at [59]:

“The Act directs attention to the minimisation of alcohol related harm generally (s5(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 proven circumstances of the particular area in relation to which the application is made. It appears that the learned judge approached his task without considering the relevance of the existing levels of alcohol related harms.”

283 The Police has reported in its intervention and objection that there is a level of alcohol-related offending occurring in the suburb of Maylands and, whilst acknowledging the reduction in alcohol-related offences in the period to May 2014, has highlighted the increase of 16% between calendar years 2012 and 2013, together with the fact the rate is significantly higher compared to neighbouring suburbs. The Police has expressed its concern that the increased availability of cheap and discounted liquor will exacerbate the problem, particularly in the domestic setting of domestic violence.

284 For example, although there was a reduction in alcohol-related domestic assault offences in Maylands in 2013, all the suburbs of Bayswater, Bedford, Inglewood and Mt Lawley experienced an increase over the period 2011-2013. Maylands

experienced an increase between 2011 and 2012. During the period 2011 – 2013 in Maylands, there were 161 verified domestic assault offences of which approximately one in three were recorded as alcohol-related.

- 285 In an endeavour to shed some light on the potential impact of a Dan Murphy's store in the locality, the Police examined alcohol-related and non-alcohol-related offences recorded in the suburb of Balga and submitted that the analysis shows a spike in offences in 2004 and 2005 when the Dan Murphy's store in Balga was approved.
- 286 The applicant considers that this analysis is flawed and that the speculative conclusion drawn by Police is wrong or cannot be sustained.
- 287 Certainly, the level of harm and ill-health attributed to alcohol evident in the suburb of Balga appears concerning. However, the Commission is not persuaded the analysis is sufficiently robust or exhaustive to draw the conclusion proffered by the Police. That is not to say there is not a relationship, simply that more detailed analysis of all the factors relevant to such an assessment would be needed to satisfy the Commission.
- 288 Equally, for similar reasons and for the reasons advanced by MCAAY and the EDPH, the Commission is not persuaded that any significant weight can be attached to the Impact Review Report prepared by Data Analysis Australia in 2010 as an indication of the likely outcome on harm and ill-health if this application were granted.
- 289 The likely degree of harm that may result from the introduction of the Dan Murphy store, over and above the harm that may be attributed to the existing premises, requires a consideration of who is likely to be affected, in both the locality and more broadly in the community, as well as a consideration of the features of the Dan Murphy's store and its operations.
- 290 In the Commission's view, the physical characteristics, and manner of promotion and operation of the Dan Murphy's store, are markedly different from the existing BWS bottle shop. Furthermore, the impact of the proposed Dan Murphy's liquor store is likely to be more significant and wide ranging.
- 291 The people and groups of people who may be affected seem to the Commission to be:
- a) the general community outside the locality;
 - b) the local community within the locality; and
 - c) the various "at risk" groups within the locality,
- and the features of the Dan Murphy store that may be relevant to a consideration of whether the store will contribute to an increase in harm or ill-health caused to one or more of these groups seem to the Commission to be, principally:

- i. the lowest price guarantee and reputation of the Dan Murphy's stores as a retailer of a wide range of alcohol available at the lowest price;
 - ii. the experience of other Dan Murphy's stores;
 - iii. the size, layout and types of product offered in the stores;
 - iv. the accessibility of the store; and
 - v. the management practices to prevent and/or mitigate the potential for harm or ill-health to increase.
- 292 The fact the existing premises includes a BWS bottle shop is, of course, an important consideration when assessing the likelihood of any increase in harm or ill-health to the community generally or the identified "at risk" groups in particular that may result from the grant of the application. Packaged liquor is available in this location and the sale of liquor from this and other liquor stores is already potentially a problem, certainly for the clients of the various service providers in the locality. As indicated above, it is the potential harm and ill-health over and above the harm that may be attributed to the existing premises that is the relevant consideration.
- 293 The EDPH has referred to a wide body of research in support of the general proposition that, while the relationship may be complex and may vary in magnitude over time and place, there is a positive relationship between the availability, level of consumption, and harm and ill-health resulting from the use of alcohol. There is also a body of research to the effect that an increase in the price of alcohol will lead to an overall reduction in consumption and, correspondingly, a decrease in the price will usually lead to an overall increase in consumption. No evidence of substance has been presented refuting this research.
- 294 Further, although there is some evidence that the level of drinking alcohol per capita in Australia may have reduced slightly, the situation in Western Australia appears to be different and, in any event, it is premature in the Commission's view to draw a final conclusion from this data that the level of alcohol consumption per capita, certainly in Western Australia, is decreasing.
- 295 The Commission is not persuaded by the applicant that because the application is not increasing the number of premises in the locality, the outlet density in the locality is not an issue. Outlet density is relevant to both the sufficiency of liquor stores in the locality, but more importantly in this case to any potential for an increase in the availability of liquor in the community. The proposed liquor store is multiple times the size of a "normal" size liquor store, stocks a greater range of liquor both singly and in bulk and sells liquor cheaper than any other outlet.
- 296 The Commission prefers the evidence of the EDPH and Professor Donovan (and the research to which they refer) that the size and design of the store will result in the sale of more liquor, including unplanned and opportunistic purchasing, and the consequential consumption of more liquor, over the evidence of the applicant that persons may buy more, but because they shop less often they do not necessarily

consume more. Even accepting the applicant's submission, such a characterisation could only be said to be general in nature and could not be said to rule out the impact described by the EDPH and Professor Donovan on the "at risk" groups in the community.

- 297 In the Commission's view, there is a likelihood that the brand positioning of Dan Murphy's, its guarantee of the lowest price for alcohol of all types, discounts on bulk purchases and the effect of the store's layout and stock ranges on unplanned or opportunistic purchasing will result in an increase in the levels of consumption of alcohol within the locality, and perhaps more broadly across the community.
- 298 The Commission also accepts the evidence of Professor Donovan that low/competitive price positioning will have an impact on low income areas where the vast majority of consumers will attempt to maximise quantity of purchase for a given dollar amount, and will have an impact on heavy or high volume drinkers (it is noted that the applicant accepts that price does affect alcohol consumption - Supplementary Evidence page 13).
- 299 The Commission notes that the average basket of products at Dan Murphy's is \$65, which the applicant contends supports the argument that the Dan Murphy's environmental features discourage "at risk" drinkers from purchasing their alcohol at Dan Murphy's and Dan Murphy's customers are generally higher income earners who want to sample different products or are catering an event (Supplementary Evidence). However, this amount is an average and having regard to the analysis of the sales data already referred to, it is clear [REDACTED].
- 300 The Commission also notes Professor Donovan's evidence that the Dan Murphy's low price positioning can be applied effectively in low, medium and upper income areas where the needs of different consumers can be met by variations in product range and quality within stores in different areas.
- 301 The EDPH refers to research to the effect socio-economic status is a key indicator linked to the cycle of alcohol and other drug problems and submits given the high degree of socio-economic disadvantage in the locality, the already existing alcohol-related harm and ill-health will be exacerbated by any increase in the supply of low cost bulk alcohol.
- 302 The applicant has acknowledged that "the conclusion that, of itself, the addition of a larger liquor store at competitive prices in the area creates an appreciable risk of an increase in social harm is a conclusion that is open to the Commission", but that "the level of risk must be weighed and evaluated in all the circumstances against the other statutory objectives and the benefits likely to flow from the proposal". (Responsive Submission page 9).
- 303 In addition to the sections of low socio-economic and disadvantaged people living in the locality, there are "at risk" groups who may be considered to be particularly vulnerable to the harms associated with low cost and readily available alcohol.

304 The agencies providing services to vulnerable individuals in relative close proximity to the premises include:

- a) Shopfront
- b) CROFT Inc
- c) 55 Central;
- d) Elizabeth Hansen Centre;
- e) Derbal Bidya Hostel; and
- f) St Lukes Church.

Some of the evidence from Managers of these agencies has been summarised earlier in these reasons. The Commission has no reason to doubt the genuineness of the concerns expressed by these agencies. Some of the more pertinent comments follow:

Director, Shopfront

- i) Alcohol addiction is often the reason visitors are out of work.
- ii) Alcohol is used as a coping mechanism.
- iii) In my experience, I would say that factors that make alcohol use more likely for visitors are when it is easy to access and cheap. I have seen clients with bottles of beer and port in their bags.
- iv) Visitors (to Shopfront) are mostly attracted to cheap packaged liquor.
- v) My main concerns for the application for a Dan Murphy's is the increased availability of cheaper liquor, as it is a brand I recognise. I also wonder if the cheap prices will affect the prices of other stores in the area in order to be competitive. I am concerned about cheap alcohol, access and availability impacting on visitors to Shopfront.
- vi) Maylands is a mixed area. There are many low income earners, and there are low cost high rise flats on both sides of the railway line. Some people are struggling with money and they may be attracted to the cheaper prices of alcohol.

General Manager, 55 Central

- i) The Crossroads project (of which 55 Central is a partner) is a strategic response to health and anti-social disorder issues relating to street drinking in Maylands (identified as one of the three problematic street drinking "hot spots" by the State Drug and Alcohol Office).

- ii) Maylands attracts a high number of street present drinkers due to, among other factors, a large prevalence of cheap liquor stores.
- iii) The proximity of Dan Murphy's to the train station will provide a further lure for problematic street present drinkers compounding the existing problem.
- iv) I have concerns that if there is an increase in the availability of cheap alcohol in an area where clients pass on a daily basis, this could act as a trigger for clients to relapse, and alcohol-related problems to increase.
- v) In summary, 55 Central's objection to the proposed development is based on our concern for clients residing at our crisis accommodation facility. Thus the close presence of a cheap liquor store will inevitably pose an even greater risk of relapse. Secondly, at a community level the availability of a cheap liquor store in an area which is already renowned for street present drinking will curtail our efforts to tackle alcohol-related harm and anti-social disorder in the area.

Manager, CROFT Inc

- i) Homelessness is an issue in the Maylands area and CROFT Inc, which has seven units with 20 beds in total to assist homeless men and women, is rarely below 90% capacity.
- ii) Alcohol is the most problematic substance for clients.
- iii) A number of clients use alcohol to self medicate because it is the cheapest option.
- iv) A \$5 bottle of wine or \$10 cask is a cheap and easily accessible fix.
- v) Clients travel to CROFT Inc predominantly by train and will pass the proposed Dan Murphy's store from Midlands train station.
- vi) Clients have told me that when alcohol is cheap they consume greater quantities of liquor which then leads to further alcohol-related problems. Clients of CROFT Inc are very sensitive to price and are dealing with complex problems.
- vii) In my professional capacity and based on conversations with clients who access CROFT Inc, I believe that the features of these premises, especially the lowest price guarantee and specials synonymous with a Dan Murphy's store, would be problematic for CROFT Inc clients in that low priced products will likely increase the amount clients drink and lead to further alcohol-related problems.

Manager, Nyoongar Patrol

- i) The cumulative effect of a larger discount outlet on the homeless in Maylands is likely to be significant.
- ii) We are even more strongly opposed to the increased access to alcohol in that area because Maylands has become a hub for the homeless, particularly those coming from country areas for medical treatment. Access to alcohol is a serious obstacle for them to complete their treatment. In my experience, alcohol contributes to existing health conditions... and there are also people in this area who are alcohol dependent.
- iii) The style (much larger, warehouse style store which will provide discount liquor to the public) means that the homeless will be able to access cheap alcohol more cheaply.

Reverend Albany, St Luke's Church

- i) In my nearly 40 years of experience as a priest, the ready availability of inexpensive liquor is one of the significant contributors in problem drinkers overindulging.
- ii) A particular group at risk who would be potentially adversely affected by the proposed Dan Murphy's store is Indigenous people (from remote and rural areas).
- iii) These people are usually on low incomes and naturally look for the cheapest product – including alcohol. In my experience, once they begin drinking they often are not able to stop until they have exhausted all their money....even when this means they and any children with them go hungry.

305 With reference to these “at risk” groups, the applicant points out in the PIA that:

- a) the view of the Peninsula Tavern is “filtered by the Midlands Railway Station” (in the case of Shopfront) or is a measured walking distance from the Tavern (with no view of the Tavern) and/or is closer to other liquor stores;
- b) the walking distance from the Elizabeth Hanson Autumn Centre is likely to be prohibitive to clients accessing the store;
- c) the Derbal Bidjar Hostel is separated from the Tavern by several blocks of residential development;
- d) the applicant aims to address any issues of harm in consultation with the community; and

- e) price elasticity factors are likely to have an impact on this vulnerable group such that the price savings on the lower price range products are not great enough that these people would forego the convenience of their local liquor store (PIA pages 39 and 45).

306 The location of the service providers in relation to the proposed store (and other liquor stores) is a relevant consideration. However, the overriding consideration is whether or not, and if so, the likelihood of, those living at, or visiting, the service providers will encounter or utilise the proposed Dan Murphy's store (refer Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health [2013] WASC 51* at [101]).

307 In his evidence, Professor Stockwell acknowledged that the applicant is correct to point out that purchasing decisions are not just affected by the final retail price, but also the cost and convenience of locating the product in question. However, he also went on to say that "the applicant's commitment to offer lowest prices and the convenience of the store with a wider variety of products would likely increase both the frequency of purchases and the amounts purchased on each occasion".

308 In the Commission's view, the price elasticity factors, as they apply to the "at risk" groups utilising the services of the abovementioned agencies, fail to account for the significance of the brand positioning and the reputation of Dan Murphy's as a liquor retailer selling a wide range of products, including a wide range of cheap and bulk alcohol, at the lowest price. Further, unlike other members of the community who may value their time and consider the inconvenience and cost before making a journey to the store, time is not as critical to vulnerable, often unemployed, people focussed and intent on acquiring the most liquor at the cheapest price.

309 The marketing and brand position of Dan Murphy's as a provider of the lowest cost alcohol, the provision of a wide range of cheap alcohol, and the likelihood the clients of service providers are on limited incomes all point to the fact the price of the alcohol available is likely to be a more significant purchasing consideration than any inconvenience that may be experienced by, for example, an extended journey to the store.

310 The Commission has also heard submissions, at some length, on the level of discount, in actual monetary and percentage terms, on various types of liquor, it being submitted, on the one hand, that the higher the discount the more likely vulnerable and "at risk" groups will purchase their liquor from the Dan Murphy's store, and, on the other hand, that the smaller the discount, in monetary terms, the less likely these groups will inconvenience themselves to venture beyond their local liquor store. It has also been suggested that as the monetary saving on cheap alcohol is so small, it is not sufficient to enable a person on a low income or with limited financial resources to buy much additional alcohol in any event.

311 In the Commission's view, based on the evidence of the service providers in particular, but also having regard to:

- a) the characteristics and promotion of the Dan Murphy's stores;
- b) the likelihood of unplanned and opportunistic purchasing; and
- c) the types of discounts offered (for example, discounts on multiple buys),

the clients of these service agencies will be attracted to the Dan Murphy's store because of its reputation as a provider of alcohol at the cheapest price, even at additional inconvenience, to maximise the purchasing power of their, often limited, financial resources.

- 312 The Commission is of the view that the likelihood of an adverse impact of the proposed Dan Murphy's store on the clients of the above agencies will be high and the extent of the potential harm significant, not only to the individuals concerned, but also to the agencies responsible for running their programs and the community generally.
- 313 The extent of the concern in the community about the levels of street drinking and the potential impact of the Dan Murphy's store on the amenity of the locality is also evident from the measures adopted by the applicant in consultation with the community in 2013 to remove 4 litre casks of wine from sale. Whilst the applicant is to be commended for this action, if this application is granted (with the attendant choice of a much wider range of cheap liquor at the lowest price in such a convenient location adjacent to the train station) there is little or no evidence that this measure, without more, will amount to an effective form of risk mitigation for those "at risk" groups intent on purchasing the most liquor possible with what money they have available.
- 314 The applicant has proposed to address any issues of harm in consultation with the community and has put forward an Interface Management Plan as a part of that process.
- 315 As is stated earlier in these reasons, the level of stakeholder engagement undertaken by an applicant is, in part, a measure of the extent to which an applicant has assessed the actual alcohol-related harm in the community, the likely impact of the proposed licensed venue the subject of an application on that harm and the likely effectiveness of ongoing consultation and measures designed to mitigate and address harm and ill-health which may result from the grant of an application.
- 316 The proposal to adopt an Information Management Plan is to be applauded and, if appropriate and supported by key stakeholders and community groups, should be considered as part of ongoing community consultation at other large liquor stores.
- 317 The applicant has submitted that the Information Management Plan "provides a much greater opportunity for the management of "at risk" people in the locality than has hitherto been the case", and makes this submission without, it seems, any consultation or engagement about the plan, its operation or its likely effectiveness with the agencies actually managing those "at risk" groups.

- 318 The applicant further submits that “not only are Dan Murphy’s management policies an improvement on management of alcohol-related concerns at the premises, but they represent a significant improvement in the management of such issues beyond the confines of the liquor store into the community”.
- 319 When asked at the Commission hearing if Information Management Plans (the adoption of which, it is noted, was a recommendation of Creating Communities in March 2014) were in operation elsewhere in Western Australia, the Commission was informed that they were not and that the proposed plan was modelled on a similar plan in New South Wales. No evidence has been presented about the success or otherwise of the plan in NSW, how it was developed or the attitude to the plan of the key stakeholders or agencies managing and providing services to “at risk” and vulnerable groups.
- 320 Without that evidence, and without evidence of the extent of consultation with the key stakeholders, community groups and service providers in this locality and the views of the parties who would be expected by the applicant to act and operate in accordance with the plan and agree to the process outlined in the plan, little weight can be attached to the plan as a effective harm mitigation tool in this instance.
- 321 The applicant further submits that the “overall public interest is best served not by leaving matters as they are with the run-down alcohol-focussed tavern and the drive through BWS bottle shop opening till late at night. Rather the public interest is best served by the grant of the application which entails a development that fosters a very different culture and with a much greater focus on the management of disadvantaged and vulnerable segments of the population”. (Responsive Submission [43]).
- 322 In addition to the above measures, the applicant contends that the Dan Murphy’s model is aiding to change the Australian drinking culture by providing a premium liquor service, a wide range of products and encouraging people to enjoy drinking as part of an overall experience in keeping with the “Mediterranean drinking culture”. In support of this “strategy”, the applicant relies on a study conducted by Dr Anne Fox referred to earlier in these reasons.
- 323 It would seem to the Commission that, irrespective of the outcome of this application, there are always initiatives that may, and should, be adopted by licensees to further encourage or assist in developing a responsible drinking culture.
- 324 However, the Commission has not been persuaded that the Dan Murphy’s model is having the effect or will have the effect of contributing to a change in the Australian drinking culture, and whilst such an approach is desirable and should be supported, the Commission notes the submission of the EDPH that “it is questionable whether the amelioration of alcohol-related harm by virtue of any purported “cultural change” as a single strategy is likely to occur at a rate or level of effectiveness, which would satisfactorily offset the increased rate of alcohol-related harm or ill-health caused by the increased supply of alcohol in this particular locality”.

- 325 In addition, the Commission notes the response to Dr Fox's study from P Miller and A Wodak that "there is a massive body of independent research that demonstrates a lack of impact from so called "cultural change" interventions and the evidence shows that we can make a meaningful difference to curbing a culture of violence and anti-social behaviour by changing drinking patterns".
- 326 Furthermore, the Commission has not been presented with any credible evidence to demonstrate that the brand positioning and advertising of Dan Murphy's has contributed to a change in the Australian drinking culture to one more akin to the Mediterranean drinking culture.
- 327 The Commission has not found it necessary to determine if the objections from the objectors or the Licensee Objector have been established to the requisite degree under the Act. However, the cumulative effect of their evidence is relevant to a consideration of whether the applicant has satisfied its ultimate onus of showing that the application is in the public interest. As Edelman J observed in *Liquorland Supra*, at paragraph 30: "*Each single objector might individually, fail to satisfy an onus of establishing an objection, but the cumulative effect of the evidence might lead to the conclusion that an applicant has failed to satisfy its ultimate onus of showing that the application was in the public interest.*"
- 328 In the Commission's view, the proposed Dan Murphy's store will, on the balance of probabilities, have a negative impact on the local community and the "at risk" groups in the community in particular.
- 329 Although it is difficult to quantify the likely increase in harm or ill-health, particularly at a broader community level, the Commission is satisfied and is firmly of the view that the harm and ill-health likely to be caused to the "at risk" groups examined in these reasons will be high and that the consequential harm and ill-health to these "at risk" groups is likely to be significant.
- 330 Furthermore, the Commission is not persuaded that the benefits of the proposed development as enunciated by the applicant outweigh the serious potential harm and ill-health that is likely to be caused to the various "at risk" groups in the locality.
- 331 After a careful consideration and evaluation of all the evidence, the Commission is not satisfied, on the balance of probabilities, that the applicant has demonstrated that the grant of the application is in the public interest as required by section 38 of the Act.
- 332 The application is, therefore, refused.



EDDIE WATLING
DEPUTY CHAIRPERSON