

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Woolworths Limited
(represented by Mr Gavin Crocket and Ms Susan Nicholson of Cullen Babington McLeod Lawyers, formerly GD Crocket & Co)
- Objectors:** 24 objectors as listed in paragraph 2(a) of the determination
(represented by Mr Dan Mossenson and Ms Jessica Patterson of Lavan Legal)
- 4 objectors listed in paragraph 2(b) of the determination
- Margaret River Chamber of Commerce and Industry
(represented by Ms Pauline McLeod, President)
- Commission:** Mr Jim Freemantle (Chairperson)
Mr Seamus Rafferty (Deputy Chairperson)
Ms Helen Cogan (Member)
- Premises:** Shopping centre at 49 Townview Terrace, Margaret River
- Matter:** Application for the conditional grant of a liquor store licence referred to the Liquor Commission pursuant to section 24 of the *Liquor Control Act 1988*.
- Date of Hearing:** 1 May 2013
- Date of Determination:** 19 August 2013
- Determination:** The application is granted.

Authorities referred to in the determination:

- *Re Minister for Resources ex parte Cazaly Iron Pty Ltd [2007] WASCA 175*
- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142*
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258*
- *Woolworths Ltd v Director of Liquor Licensing [2012] WASC 384*
- *Liquorland (Australia) Pty Ltd v Executive Director of Public Health [2013] WASC 51*
- *Liquorland (Australia) Pty Ltd v Executive Director of Public Health LC 18/2012*
- *Repertoire Wines Pty Ltd v Director Liquor Licensing and Others LC 40/2011*

Introduction

- 1 On 2 July 2012, an application was lodged by Woolworths Limited (“the applicant”) for the conditional grant of a liquor store licence for premises to trade as Woolworths Supermarket Margaret River at 49 Townview Terrace, Margaret River (“the premises”).
- 2 Notices of objection to the application were received from:
 - a) 24 objectors represented by Lavan Legal:
 - Steve Bolesta – Bolesta’s Backyard Creations
 - Farmhouse Margaret River
 - Larry and Ros Brennen
 - Gabrielle Taylor
 - Shane Bradshaw
 - Sandy Hohnen
 - Donna McClelland
 - Danni Marshall
 - Charlotte O’Beirne
 - Edward Donato and Valerie Vallee
 - Natasha Bussell
 - Mat Lewis
 - Adrian Frank Pethica
 - Nicole Sinclair
 - John Breese
 - Ian Tassell
 - Caroline Bannister
 - Amy Mataboni
 - Andreas Papageorge
 - Settlers Holdings Pty Ltd (licensee of Settlers Liquor Store)
 - Good Things in Life Pty Ltd (licensee of Settlers Tavern)
 - Regal Bay Enterprises Pty Ltd (licensee of Margaret River Hotel)
 - Alto Pty Ltd (licensee of Prevelly Liquor Store)
 - Yawarra Holdings Pty Ltd (licensee of Margaret River Regional Wine Centre)
 - b) 4 unrepresented objectors:
 - Susan Miller
 - Inger Karlsson
 - Sara Willmott
 - Gregory Home / Prevelly Liquor Store
 - c) Margaret River Chamber of Commerce and Industry

3 On 27 November 2012, pursuant to section 24 of the *Liquor Control Act 1988* (“the Act”) the Director of Liquor Licensing referred the application to the Liquor Commission (“the Commission”).

4 A hearing before the Commission took place on 1 May 2013.

Submissions on behalf of the applicant

5 The applicant seeks to operate a relatively small liquor store of approximately 165m² forming part of a Woolworths supermarket at 49 Town View Terrace, Margaret River.

6 The applicant has complied with all formalities in connection with the application including but not limited to the payment of fees, advertising requirements, section 40 certificate, evidence of tenure and all other relevant matters.

7 The Public Interest Assessment (“PIA”) and other documentation submitted in relation to the application included:

- floor and site plans, maps, elevations and photographs of the premises and the general area in which the premises are situated;
- a harm minimisation policy and code of conduct;
- the applicant’s community investment strategy;
- a Health and Environment Report (Caporn Report) which assessed the health, environmental and amenity aspects of the proposed premises;
- MGA Town Planners Report (and supplementary report);
- a Traffic Impact Study and an Environment and Noise Assessment;
- statements from Anthony Smith and Shane Tremble (senior employees of the applicant);
- ‘witness’ statements from 11 individuals supporting the application;
- report from Margaret River Market Research being a telephone survey and market survey questionnaire (and it’s results);
- a “Secret Shopper” report; and
- the applicant’s market research documents viz Project WLG extract and Customer Profiles Extract (with redacted versions).

8 In addition, the following merits of the application were submitted:

- a) The premises which are strategically located close to the main street of Margaret River, with no “street” frontage, will be well managed with adequate security and harm and ill health minimisation measures in place and will cater for the requirements of consumers.
- b) The applicant argued that Margaret River is an important regional town which has experienced significant growth in the past decade. Whilst the resident population of the region has grown to approximately 5800 and 1,570,900 visitor nights per year in 2011, the retail packaged liquor services and facilities have not changed since approximately 1997 and although these services and facilities satisfy the packaged liquor requirements of some consumers (and may well continue to do so), there are equally a number of customers who are dissatisfied and who want and require the services proposed by the applicant.
- c) Currently there are only 3 licensed outlets for packaged liquor in Margaret River, two are located in the Margaret River CBD, being the Settlers Liquor Store and the drive through bottle shop attached to the Margaret River Hotel and the third the Margaret River Resort/Knights Inn on the western side of Margaret River away from the Margaret River CBD. These outlets are insufficient to provide adequately for the diverse packaged liquor requirements of the vast volume of consumers who live in or visit the Margaret River area. The tourist figures for the Margaret River area are approximately 1.5 million nights per year and an estimated 750,000 day trippers visit the shire per year.
- d) The market survey conducted by the applicant showed that 100% of the residents surveyed supported the application whilst 95% of the visitors supported the application.
- e) No “at risk” groups could be identified in the locality.
- f) The documentation submitted by the applicant is sufficient to discharge its legislative onus (sections 38(1) and 38(2) of the Act) and the grant of the application will introduce competition and diversity in the retail packaged liquor services in Margaret River by providing consumers with market choice which is in the public interest and in the spirit of the Act. In short, the applicant submits that the documentation establishes that the premises will:
- represent a significant step in the development of the retail packaged liquor services and facilities in the locality as it will introduce a new style of packaged liquor services and facilities not currently available;
 - not negatively or adversely impact on the local community or its environment;
 - be appropriately located in a shopping centre that is designed to provide a range of services and facilities for the weekly shopping needs of the local community;

- introduce choice, competition and diversity in retail packaged liquor services into Margaret River.

Submissions on behalf of the objectors

- 9 The group of objectors represented by Lavan Legal consisted of licensee objectors and residents. The grounds cited for the objections were essentially that:
 - a) the application was not in the public interest; and that;
 - b) the grant of the application would cause undue harm or ill health and the amenity would be lessened.
- 10 The evidence submitted on behalf of the objectors was extensive and largely related to the existence of the “Margaret River Brand” and how the brand would be damaged by granting the application.
- 11 The objectors stated that the supporters of the application were relatively few (some of which were encouraged by the promise of a \$50 gift voucher) and there was a clear majority favouring the refusal of the application. Several unique elements require consideration in relation to the application and a range of unusual factors combine to set this locality apart from the rest of the state.
- 12 The strengths and unique selling points of the area include indulgent experiences such as fine dining, winery cellar doors, boutique accommodation, arts/crafts, aquatic adventures (surfing, fishing, diving, snorkelling and sailing) and the laid-back coastal towns and surrounding environment (forests, caves) of the Australian South West area. The Margaret River wine region is the most developed in terms of products and infrastructure for tourism.
- 13 The proposed liquor store model is entirely incompatible with the amenity, the Margaret River brand, the Margaret River wine region, the local industries and all other aspects of the area.
- 14 The impact of granting the application on the amenity of the area will be disastrous by introducing a business that is incompatible with and offers nothing to complement the amenity in the region. In addition harm or ill-health might be caused to people due to the supply and consumption of cheap and discounted Woolworths supplied liquor and the application simply lacks the cogent evidence of support for the new store.
- 15 The grant of the application will not only fail to facilitate the key elements of the legislation but will go further and have negative consequences in that it will be incompatible with the proper regulation of the sale, supply and consumption of liquor and will potentially cause harm or ill-health rather than minimise harm or ill-health.
- 16 Furthermore it will not cater for the requirements of consumers with regard to the proper development (emphasis added) of the local liquor industry, the WA liquor industry, the local tourism industry and other industries nor will it facilitate the use and

development of licensed premises reflecting the diversity of requirements of consumers because most of the requirements of consumers in Margaret River relate to unique aspects of the area which the application does not address in any way.

- 17 Even if the Commission were not persuaded on particular grounds in all of the objector's cases individually that does not mean that the Commission cannot be persuaded by the objectors' cases overall. Collectively the effect or impact of all of the objectors' evidence paints an overwhelmingly clear negative picture which completely overshadows the applicant's case.
- 18 The locality / brand argument which is presented forcibly in this case only applies in respect of the Margaret River locality and is not relevant to any other locality in Western Australia due to the unique and exceptional circumstances of the Margaret River region in Western Australia.
- 19 The applicant's claims that some of the objectors are commercially motivated are strongly refuted; on the contrary the objectors are in fact motivated, by a passionate desire to protect and preserve the locality, the Margaret River brand, the relevant industries and the interests of their community.
- 20 The applicant's submission that the objections should be treated as a single objection is strongly refuted. The objectors submit that whilst there may be common grounds of objection and common submissions between them, each objector has chosen to be an individually named objector.
- 21 The basis of the objection by the Margaret River Chamber of Commerce and Industry was that the grant of the application is not in the public interest of the Margaret River community and the grant would lessen the amenity of the Margaret River region for the following reasons:
 - a) liquor outlets in Margaret River are already in over supply and no more are needed or required;
 - b) the proposed Woolworths Liquor outlet will be detrimental to the community's Margaret River wine region brand; and
 - c) an additional liquor outlet by Woolworths will be detrimental to the community's unique brand and hence will have an adverse impact on the business community.
- 22 The objection by Gregory Home (manager of the Prevelly Liquor Store) was made on the basis that:
 - a) there was a very high concentration of liquor outlets in the area and the grant of the application will severely undermine the viability of many other businesses;

- b) parking problems would arise and the granting of the application will severely affect the good order of the Margaret River CBD and damage investor confidence and retail activity;
 - c) there are strong reasons to refuse the application on the grounds of harm and ill health to people of low socio-economic status and the “amenity” of the region/town will be heavily affected by the grant of the licence.
- 23 Three of the objectors, Karlsson, Miller and Willmott, essentially objected to the application on the grounds that there are already sufficient retail liquor outlets in the area, the location of the proposed premises is inappropriate as it is a quiet residential area and traffic problems and disturbances and disruption could arise from the operation of the premises.

Applicant’s responsive submissions to the objections

- 24 The real objectors in this application are the competitor licensees. The objections by Susan Miller, the Margaret River Chamber of Commerce and Industry, Gregory Home and Inger Karlsson fail to meet the mandatory statutory requirements of the Act. In addition those objections and the objection by Sara Willmott do not substantiate the grounds of objection relied upon.
- 25 All other objections (from the objectors being represented by Lavan Legal) are identical in form and content (other than the name of the objector), rely on the same grounds of objection, rely on the same particulars and evidence to support the grounds of objection, and are repetitious of each other – and ought to be treated as a single objection.
- 26 The following five objectors of the group being represented by Lavan Legal are local competitor licensees;
- a) Settlers Holdings Pty Ltd (licensees of Settlers Liquor Store, Margaret River)
 - b) Good Things in Life Pty Ltd (Licensee of Settlers Tavern, Margaret River)
 - c) Regal Bay Enterprises Pty Ltd (licensee of Margaret River Hotel, Margaret River)
 - d) Alto Pty Ltd (licensee of the Prevelly Liquor Store, Prevelly)
 - e) Yawarra Holdings Pty Ltd (licensee of Margaret River Regional Wine Centre otherwise known as the Margaret River Resort/Knight’s Inn)

and protection of an existing licensee’s business is not a public interest consideration under the Act.

- 27 Furthermore, much of the material presented by the identical objectors has little substantive or factual evidence of any real or actual issues and much is misconceived, exaggerated and emotive. Examples include the comparison of the proposed premises

and the proposed (but defeated) Margaret River Coal Mining Tenement and claims of predatory and anti-competitive practices by the applicant.

- 28 At the crux of the identical objectors' case are the propositions that:
- a) the grant of the application will adversely impact the "Margaret River Brand" and the unique and historical "country town" look of Margaret River;
 - b) the applicant's "pricing policy" and business model will have dire and adverse effects on the existing retail packaged liquor outlets, local winery Cellar Door sales and the local wine industry;
 - c) the location of the proposed premises and its operation will adversely affect the local neighbourhood; and
 - d) the existing retail packaged liquor outlets in Margaret River satisfy the requirements of consumers.
- 29 The applicant challenges the validity of much of the evidence and material provided by the identical objectors lodged in support of their objection on the basis that it is irrelevant, insufficiently probative, has no nexus, and is a mere submission (as distinct from evidence), or is unqualified opinion evidence.
- 30 The applicant is a strong supporter and advocate of Margaret River wine, its liquor products and the industry.
- 31 Evidence provided by the identical objectors in relation to the services and facilities provided by the existing two retail packaged liquor outlets in Margaret River CBD (Settler's Liquor Store and the Margaret River Hotel) only confirms the applicant's position that the nature of the proposed premises, its proposed product range, the adjoining and complementary services and facilities to be provided in the immediate vicinity of the proposed premises and its target market differs from that of the existing premises.
- 32 The applicant acknowledges that a number of people in the relevant area do not support the proposed premises, but the applicant's evidence both subjective and objective, demonstrates that the proposed premises will 'cater to' a proportion of packaged liquor consumers, including but not limited to:
- a) the telephone survey which demonstrated 32% of respondents (from the Margaret River area) want to purchase liquor from the proposed premises;
 - b) the witness statements from local community members which reveals that a proportion of the Margaret River community require the amenity of one stop shopping as proposed at the proposed premises;
 - c) the Market Survey Questionnaire results and witness statements from visitors to Margaret River which reveals the current packaged liquor services and amenities

do not satisfy their requirements and that the proposed premises will provide a standard of services and facilities that they are used to, and desire but which are not currently provided in Margaret River;

- d) whilst it is clear the existing retail packaged liquor outlets in Margaret River satisfy (to some extent) the packaged liquor requirements of some members of the local community, it is equally clear these existing outlets do not satisfy the requirements of other members of the public, as evidenced by the telephone survey, the market survey questionnaire and the various witness statements.

- 33 The argument of the identical objectors that there are 59 liquor licences in the 'suburb' of Margaret River is not relevant – the only licences relevant to the application are those currently selling packaged liquor.

Determination

- 34 This application for the establishment of a Woolworths liquor store in a shopping centre at 49 Townview Terrace was referred by the Director of Liquor Licensing to the Commission pursuant to section 24 of the Act as was a parallel similar application by Liquorland (Australia) Pty Ltd.

- 35 The Commission notes that the applicant and the objectors are aware of the application lodged by Liquorland (Australia) Pty Ltd for the conditional grant of the liquor store licence at premises (to be associated with the existing Coles supermarket) located at Bussell Highway, Margaret River. That application is not considered to be a 'competing' application and will be determined separately from this application on its own merits.

- 36 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 Minster for Resources: ex parte Cazaly Iron Pty Ltd [2007] WASCA 175* and *Palace Securities Pty Ltd v Director Liquor Licensing (1992) 7 WAR 241*). The Commission 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".

37 Furthermore, advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities* supra). The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimize harm caused to people, or any group of people, due to the use of liquor; and
- to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

38 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 minimizing 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] WASCA 258).

39 Pursuant to section 33(1) of the Act the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest. In *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 EM Heenan J described the “absolute discretion” provided for under section 33 (10) in the following terms:

“The “absolute discretion” to grant or refuse an application of (sic) any ground or for any reason that the Commission considers in the public interest, s 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: Hermal Pty Ltd v Director of Liquor Licensing [2001] WASCA 356 [6] – [7] (Wallwork J) and Palace Securities v Liquor Licensing (1992) 7 WAR 241, 249-250 (Malcolm J) and 263 (Wallwork J). 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 or make those objects the exclusive considerations nor the sole determinants of the public interest: Re Michael: Ex parte Epic Energy (WA) Nominees Pty Ltd [2002] WASCA 231; (2002) 25 WAR 511, [52] – [55]; O’Sullivan v Farrer [1989] HCA 61; (1989) 168 CLR 210, 216 and Jericho Nominees Pty Ltd v Dileum Pty Ltd (1992) 6 WAR 380, 400.”

40 In assessing the application, the Commission makes it clear that the commonly held view of all parties was that Margaret River “included not only the township but the surrounding region which includes a large number of wineries offering cellar door sales, diverse food offerings and other tourist attractions”.

41 On this definition, the resident population is approximately 12,000 but there is a large transient population of tourists / holiday makers / visitors (some 1.5 million bed nights

per annum and 750,000 day trippers per annum). Thus in any assessment of where the public interest lies, not only residents but the high volume of visitors must be taken into account as constituting 'the public', given the nature of the region as a major destination for tourists.

- 42 The applicant is seeking to establish a moderate sized (emphasis added) liquor store of 165 m² adjacent to its supermarket operation.
- 43 The Commission must consider the likelihood of harm or ill-health being caused by the grant of the application. One of the Act's primary objectives is the minimization of harm and ill-health. Section 38(4) of the Act also makes clear the obligation of the applicant to adequately to address this issue.
- 44 There were 24 parties that lodged objections and chose to make a joint written submission and be represented as a group at the hearing as well as 4 other individuals and the local Chamber of Commerce and Industry which lodged objections.
- 45 In essence, the grounds of the objections were that the application was not in the public interest, would cause undue harm and ill health, decrease the amenity of the area and granting the application would otherwise be contrary to the Act.
- 46 The objectors provided little evidence that the grant of the application would lead to undue harm and ill health (actually or potentially) but relied on the supposition that the applicant would supply cheap liquor which would result in increased harm and ill health.
- 47 The real focus of the Lavan Legal case was on the "brand" or image of Margaret River statewide, nationally and indeed internationally. This brand or image had been built up carefully over time and focused on a quality product and quality visitor experience. They argued that the establishment of a "national chain" outlet would seriously diminish if not destroy this carefully built branding.
- 48 The Commission accepted that there would necessarily be some impact on the Margaret River Hotel. The objectors argued that amenity would be lost if this heritage listed building and icon of the township were to be forced out of business as a hotel, the purpose for which it was built.
- 49 Whilst the Commission understands the concern, it is of the view that there is no apparent reason why the Margaret River Hotel cannot and will not adapt its business model to suit the changing circumstances. In any event, private interests should not be confused with the public interest.
- 50 It is relevant to note the Commission's comment in the matter of *Repertoire Wines Pty Ltd v Director Liquor Licensing and Others LC 40/2011* at para 58:

"In making its decision the Commission has had regard to the requirement of consumers. The contest between the applicant and the objectors in this regard raises the issue of how the Commission treats existing liquor outlets. Whilst the

Commission does not consider an application in isolation from existing liquor outlets because of the various objects of the Act such as harm minimization, the requirements of the consumers and other public interest issues, what the Commission cannot do is to taken into account the competitive impact that a new outlet would have on the existing outlets”.

- 51 The Commission accepts that Margaret River is a “special area” with a distinctive branding and quality image. The Commission also accepts that Margaret River is more than the township but constitutes a broad geographic area in terms of being a wine region. However, the Commission does not accept that the establishment of this relatively moderate sized outlet as an adjunct to a supermarket will damage the carefully cultivated image of the Margaret River Township and the Margaret River wine region. In fact, there was little cogent evidence submitted to suggest that it would. The objectors’ case was predicated more on emotion than demonstrable outcomes.
- 52 The objectors further argued that the applicant had not made its case that granting the licence was in the public interest and in keeping with the objects of the Act. The Commission came to a different view for the reasons set out in this decision.
- 53 Granting this licence would increase the current packaged liquor floor space in Margaret River and self evidently outlet density but this does not in itself mean that the granting of the application would be contrary to the objects of the Act and / or not in the public interest. One of the primary objects of the Act pursuant to section 5 of the Act is to minimise alcohol-related harm, while another is to cater for the requirements of consumers for liquor and related services. Where there is conflict between the various objects of the Act, the licensing authority needs to weigh and balance those competing interests. It is relevant to note that Ipp J in *Lily Creek* (supra) observed that it is significant that the primary object in section 5(1)(b) is to “minimise” harm or ill-health, not to prevent it absolutely.
- 54 There was no compelling evidence before the Commission to indicate that the population in Margaret River suffered from unacceptable levels of existing alcohol related harm. Notwithstanding the assertions by the objectors that the discounted bulk purchase price policy which will result in cheap liquor being made available, the Commission is not convinced that the grant of this application will result in any unacceptable harm or ill health issues. The Commission further notes that neither the Commissioner of Police nor the Executive Director of Public Health chose to intervene in this application to draw the attention of the Commission to alcohol related harm issues in the locality.
- 55 In assessing the application, overall, the Commission held that granting the licence would be consistent with the objects of the Act and given the particular local, social, demographic and geographic circumstances of this application, on the balance of probabilities there is little likelihood that the granting of this licence located in a shopping centre, will result in any negative impact on the amenity of the area nor will it have any real impact in the “branding” of the Margaret River region about which the objectors are so understandably concerned.

- 56 The objectors raised the issue of outlet density arising out of this application and the parallel application by Coles for a Liquorland store not far distant.
- 57 Outlet density per se is not a matter of itself that is prescribed by the Act as requiring direct consideration by the licensing authority but is relevant in assessing where the public interest lies and in meeting the objects of the Act.
- 58 The Commission is well aware of its own knowledge of a body of academic research in reference to outlet density e.g. *Predicting Alcohol Related harms from licensed outlet density: A feasibility study* (Chikritzhs, Catalano, Pascal and Henrickson, 2007) and the *Pereira Report* and has previously expressed the view that some caution has to be shown in how the conclusions of this body of research are viewed.
- 59 In *Liquorland (Australia) Pty Ltd v Executive Director of Public Health LC18/2012*, the Commission stated;
- “There is a considerable body of research which demonstrates a correlation between outlet density and harm caused but this needs to be applied with caution to specific locations as much of the data is aggregated and general in nature.”*
- 60 It is therefore a matter for the Commission to determine whether the granting of the licence, and possibly a second new licence is in the public interest and consistent with the objects of the Act.
- 61 Whilst it is the conclusion of the Commission that all the objectors have not made out their objection as required by section 73(10) of the Act, this is not fatal to the objectors’ case to the extent that the Commission can and, certainly in this application should, take note of the objectors views. Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health [2013] WASC 51* held at para 30 that:
- “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”.*
- 62 The Commission has carefully weighed the objectors’ point of view against the broad public interest which must incorporate the interests of the large transient population of tourists, visitors etc as well as residents wanting greater choice and one stop shopping convenience, supporting the application.
- 63 As stated earlier, the Commission does not see the impact on the community of a moderate sized liquor store as an adjunct to a supermarket as being detrimental to the brand or image of Margaret River or causing any undue harm or ill-health in the community. The increased choice which will be made available to the people of Margaret River and one stop shopping convenience afforded by the grant of the application is a matter of significant public interest and to which the Commission gives greater weight.

64 The Commission is satisfied that the applicant has discharged its onus under section 38(2) of the Act and that granting the application is in the public interest.

65 Accordingly, the application is granted.

66 One final comment: Applicants and objectors are expected to lodge only such material which is germane to the issues under consideration. The Commission is greatly concerned with the large volume of possibly irrelevant material that was lodged by the parties in this application for a 165m² moderate sized liquor store as part of a supermarket. Parties should not confuse quantity with quality and in practical terms, assessing this volume of material leads to an unnecessary delay in issuing the determination.



MR JIM FREEMANTLE
CHAIRPERSON