

**Liquor Commission of Western Australia**  
***(Liquor Control Act 1988)***

**Applicant:** Liquorland (Australia) Pty Ltd  
*(represented by Mr Steve Standing and Ms Triska DiCicco of Herbert Smith Freehills, formerly Freehills)*

**Objectors:** 11 objectors as listed in paragraph 2(a) of the determination

32 objectors as listed in paragraph 2(b) of the determination  
*(represented by Mr Dan Mossenson and Ms Jessica Patterson of Lavan Legal)*

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)

**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*.

**Premises:** Tenancies 3 and 4, Margaret River Shopping Centre, 132 Bussell Highway, Margaret River

**Date of Hearing:** 2 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*

## Background

- 1 On 25 September 2012, an application was lodged by Liquorland (Australia) Pty Ltd (“the applicant”) for the conditional grant of a liquor store licence for premises at Tenancies 3 and 4, Margaret River Shopping Centre, 132 Bussell Highway, Margaret River (“the premises”).
- 2 Notices of objection to the application were received from:
  - a) 11 unrepresented objectors
    - Chris Harrington
    - Jade Adams
    - Jessica Patterson
    - Sally and Keith Scott (local wine producers)
    - John Perpignani of Bob’s Shoe Store
    - Katherine Sara Wood (employee of Bob’s Shoe Store)
    - Jane Fong (employee of Bob’s Shoe Store)
    - Natalie Botica (employee of Bob’s Shoe Store)
    - Andrea White (employee of Bob’s Shoe Store)
    - Kris Paton (employee of Bob’s Shoe Store)
    - Margaret River Chamber of Commerce and Industry
  - b) 32 objectors (represented by Lavan Legal)
    - Steve Bolesta – Backyard Creations
    - Natasha Bussell
    - Frank Pethica – FP Tech
    - Shane Bradshaw – Mitre 10 Garden Centre
    - Clare and Andrew Newnham
    - Sioban Baldini
    - Mechelle Bernhardt
    - Neil Tweedie
    - Tash Hill
    - Donna McClelland
    - Lesley Bremmer
    - Karen and Robert Gough
    - Tassell Park Wines Pty Ltd
    - Sean Blocksidge
    - Sandra Hohnen
    - James McCall
    - Larry, Ros and Rachel Brennan
    - John Breese
    - Andreas Papageorge
    - Ian Tassell
    - Charlotte O’Beirne – Free the Wine

- Max McCall
  - Lara McCall
  - Stephen and Amber Martin
  - Nicole Sinclair
  - Edward Donato and Valerie Vallee
  - Astrid Horack – Margarets Forest Holiday Apartments
  - Regal Bay Enterprises Pty Ltd (licensee of Margaret River Hotel)
  - Good Things In Life Pty Ltd (licensee of Settlers Tavern)
  - Settlers Holdings Pty Ltd (licensee of Settlers Liquor Store)
  - Emu Springs Pty Ltd, Wraysbury Nominees Pty Ltd and others (licensees of Margaret River Resort)
  - Alto Pty Ltd (licensee of Prevelly Liquor Store)
- 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 2 May 2013.

#### **Submissions on behalf of the applicant**

- 5 The applicant seeks to operate a liquor store of approximately 156.7m<sup>2</sup> comprised of a selling area of 96.7m<sup>2</sup>, a cool room area of 37m<sup>2</sup> and a stock area of 23m<sup>2</sup> adjacent to an existing Coles supermarket in the Margaret River shopping centre.
- 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 documents submitted in relation to the application included:
- layout, floor and site plans;
  - aerial and other photographs of the premises;
  - maps of the area and report from Data Analysis Australia (“DAA”) in relation to surveys concerning a proposed liquor store in Margaret River and addendum to that report;
  - Bodhi Alliance Report (and subsequent clarification);
  - “Social and Planning Assessment Report: Proposed Liquor Store Margaret River”;
  - a statement of Mr Shawn Holloway (and supplementary statement), State Manager of Operations for Coles Liquor Group in Western Australia,

concerning the operation of Liquorland stores generally and the proposed premises;

- Management Plan for Liquorland stores which is comprehensive and includes plans in relation to responsible service practices, intoxicated persons and disorderly persons, drunks and vagrants, controlling juveniles, complaints and the neighbourhood amenity and in-house training);
- Code of Conduct, House Policy for the responsible service of alcohol and a statement containing details of the proposed premises product range, the management and staffing of the proposed premises and the applicant's pricing policy.

8 Reports by and correspondence from Urbis Pty Ltd "Supplementary Social and Economic Evidence" referring to site location and market analysis, current provision of liquor stores, analysis of economic effects and response to key objections were lodged.

9 The applicant also lodged:

1. a report from Dr John Henstridge of DAA commenting on the online survey evidence lodged by the objectors represented by Lavan Legal along with a report (dated 11 April 2013) prepared for the applicant by Mark Abercromby entitled "Expert Evidence for Herbert Smith Freehills: Liquorland Margaret River";
2. a report (dated 12 April 2013) prepared for the application by Tony Spawton entitled "Expert Evidence in Support of a Liquor Store under the Liquorland Brand to be Located in the Town of Margaret River, Western Australia".

10 The written submissions were augmented by oral submissions at the hearing and may be summarised briefly as follows:

- a) the premises are relatively small, are appropriately situated and will cater for the proven contemporary consumer requirements for packaged liquor in the locality (the immediate locality and the extended Margaret River area) in particular but not limited to, by providing 'one stop shopping' convenience for customers of the associated Coles supermarket that is not presently available.
- b) In addition, the premises will add to the choice and diversity of facilities provided by existing retail licensed premises in the area whilst supporting the local wine industry; and thereby aid the proper development of the liquor industry in the State in accordance with the objects of the Act.

11 The applicant's evidence, which is specific to the circumstances of the proposed premises, outweighs the generalised evidence introduced by the objectors who have failed to establish the validity of their objections or provide any countervailing public interest factors that weigh against the grant of the application.

- 12 The existing level of alcohol related harm in the area is not greater than that which appears to be commonly accepted in the community given Bodhi's analysis of 'at risk groups' in the area and the Shire of Margaret River-Augusta SEIFA scores.
- 13 There is no cogent evidence that the grant of the application will cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity or that amenity of the area would in some way be lessened.

**Submissions on behalf of the objectors represented by Lavan Legal**

- 14 The submissions on behalf of the objectors represented by Lavan Legal were supported by a statutory declaration sworn by Jack Carlsen on 20 March 2013 and a report entitled "the Development of a Margaret River Brand" by Tim Mazzarol of Roussilon Holdings Pty Ltd dated 21 March 2013 and focused mainly on the assertion that the locality and area is unique and has its own brand which is made up of the combination of the unique factors of the area in particular the wine region and the well known reputation and profile of the Margaret River wine region.
- 15 The submissions can be summarised as follows:
  - a) the amenity of the area is influenced by mixed land uses with a heavy focus on grape growing wineries and wine production. It is famous for attracting tourists to the south-west of the state and includes heritage elements (of particular note is the Margaret River Hotel which has 'cultural heritage significance' with National Trust classification);
  - b) the outlet density in this locality and its surrounds is arguably the highest in Western Australia outside of the metropolitan area – there are 59 liquor licences in the 'suburb' of Margaret River of which 34 are authorised to sell packaged liquor to the general public and there are five packaged liquor outlets in the Margaret River town centre, all situated within a couple of hundred metres from the proposed liquor store premises and which provide the public with comprehensive, dedicated take-away liquor services and facilities that are either bigger than or around the same size as the proposed liquor store;
  - c) there are approximately 6,328 residents living in Margaret River which is a tourist destination attracting large numbers of visitors with an estimated 700,000 people visit Margaret River every year;
  - d) there are 535 opponents to the application and at best there may arguably be said to be 140 supporters of the application;
  - e) Detailed submissions were made in relation to the uniqueness of Margaret River and the Margaret River brand relating to (amongst other things), the collection of factors which make up 'the brand' – physical, operational, cultural, social and historical and the number of businesses (154) in the Margaret River town centre – only 13 of which are owned and operated by large national organisations or franchises;

- f) the proposed liquor store will restrict and potentially eradicate local businesses through uneven competition and the proposed liquor store will not significantly, if at all, showcase or contribute to enhancing the local wine industry or the local tourism industry;
  - g) the grant of the application is not in the public interest mainly because of the fact that the impact on the amenity will be disastrous by introducing a business that is incompatible with and offers nothing to complement the amenity. In addition, harm or ill-health might be caused to people due to the supply and consumption of cheap (Liquorland supplied) liquor;
  - h) the grant of the application will not cater for the requirements of consumers for liquor and related services with regard to the proper (emphasis added) development of the liquor industry, the tourism industry and other hospitality industries and furthermore will detract from the important tourism industry – the liquor store will deter tourists from travelling around the region visiting cellar doors;
  - i) to the extent that shopper convenience is relevant there are several quality options available in the town – Settlers Liquor Store is adjacent to the IGA supermarket and the existing Coles supermarket is less than 100 metres from both Settlers Liquor and the Margaret River Hotel Bottleshop;
  - j) the grant of the application will not facilitate the use and development of licensed premises reflecting the diversity of the requirements of consumers (section 5(2)(a) of the Act) such diverse requirements are made up of a combination of factors which combined, are relevant to, and help perpetuate, the Margaret River brand and the existing liquor outlets in Margaret River already provide for all of the diverse requirements.
- 16 The objectors made submissions as to why the following evidence submitted by the applicant should not be relied on:
- a) the publication “Backing Aussie Wine”;
  - b) “Review of Evidence for a Liquor Licensing Application, Margaret River” by DAA;
  - c) supplementary statement of Shawn Holloway;
  - d) “Liquorland Margaret River Supplementary Social and Economic Evidence” (Urbis Report);
  - e) “Expert Evidence” by Mark Abercromby;
  - f) letter from Rhys Quick of Urbis.
- 17 The objectors referred to the pending application in respect of a Woolworths liquor

outlet in Margaret River and submitted that both applications should be refused but should the Commission be inclined to grant one of the two, it would be preferable to grant the Woolworths application because it is the lesser of two evils, albeit only marginally in terms of potential impact on the amenity of the town centre's main street and the historic Margaret River Hotel.

### **Submissions on behalf of the objectors (not represented by Lavan Legal)**

- 18 The Bob's Shoe Store objection annexed a petition signed by 1025 persons opposing the application.
- 19 These submissions were essentially that granting the application would not be in the public interest on the following grounds:
  - a) there would be a negative impact on the amenity and existing retail environment in the town including the loss of the two retail stores which would be replaced by the proposed liquor store;
  - b) there are adequate existing liquor outlets;
  - c) Liquorland's focus on discounted liquor would 'bring down' the Margaret River brand;
  - d) possibility of increased consumption of alcohol, may lead to more alcohol related harm;
  - e) major chain liquor store would detract from the "tourist destination" status of the area.

### **Applicant's responsive submissions to the objections**

- 20 The applicant submitted that the letter received from the Australian Hotels Association, to the extent it purports to be an objection, should not be accepted on the basis that it is out of time, repetitive of the other objections and is unsubstantiated by any evidence.
- 21 The objections may be categorised as follows:
  - Jade Adams, Chris Harrington and Jessica Patterson – "the resident objectors";
  - "the Bob's Shoe Store objections" – objectors identified in paragraph 2 of the determination;
  - the objection by Keely Robertson on behalf of the Margaret River Chamber of Commerce and Industry – "the MRCCI objection";
  - Sally and Keith Scott – "the Scott objection";



- The 32 objectors represented by Lavan Legal – “the Lavan objectors”;
- 22 The resident objectors, Bob’s Shoe Store objections, the Scott objection and the MRCCI objection should not be heard as they have failed to discharge the onus under section 73 of the Act;
  - 23 The central contention underlying the Bob’s Shoe Store objections is that the application should be rejected because it will result in the loss of the existing Bob’s Shoe Store and Just Jeans tenancies. This is a private commercial matter between the shopping centre owner and Bob’s Shoe Store and Just Jeans and is not relevant to the public interest.
  - 24 The petition tendered in support of the Bob’s Shoe Store objection should be rejected as there is no evidence as to where the petitions were distributed for signing, many signatories gave addresses outside of the Margaret River area and there is no evidence that they have any connection with, or have ever been to, the Margaret River area.
  - 25 The reference in the petition to the application for planning approval is inapposite and the signatures on the petition are evidence that a number of people support the private interests of the two existing businesses at most and as such do not provide any evidence relevant to the public interest in granting the application or to establish the validity of any objection.
  - 26 The membership of the MRCCI includes a number of licensees operating within the Margaret River region – the objection contains extracts of a number of member’s comments purportedly made in response to a survey it conducted, which made it clear that protecting the market share of existing licensees is a central reason underlying the objection. This is not a valid public interest ground of objection.
  - 27 As the survey results have not been provided by MRCCI, the survey cannot be properly tested and should be given no weight – it is not possible to rule out the possibility that the views of members who are also objectors in their own right (e.g. the Margaret River Hotel, Settlers Tavern and Bob’s Shoe Store) have been double counted.
  - 28 The Lavan objections are in identical terms and rely upon a common set of particulars and submissions in support of their grounds of objection. Many of the assertions made are not supported by any ‘relevant, reliable and logically probative evidence’ and much of the material relied upon by the Lavan objectors is general and speculative in nature and does not engage with the specific circumstances of the application.
  - 29 Of the 32 Lavan objectors, 11 are either licensees or are closely associated with licensees and the focus of the submissions by the Lavan objectors representatives on the applicants pricing and the impact of the store on existing licensees (including some of the Lavan objectors’ own businesses) confirms that the Lavan objectors are motivated by their own private interests.

- 30 The Lavan (and Scott) objections cannot be taken to be representative of the local wine industry. The Margaret River Wine Industry Association, whose website states that their charter is 'primarily to represent the interests of the Margaret River wine industry and promote Margaret River wine' chose not to object.
- 31 The Lavan objectors' claims concerning the applicant's pricing policies are wrong. The overall conclusion of the Urbis Report supports this. Furthermore, the Lavan objectors' claim that the pricing policy of the applicant is likely to increase the risk of harm and ill-health in the locality is inapposite – there being no evidence that the proposed liquor store will sell packaged liquor at consistently lower purchase prices than existing retailers in the locality;
- 32 The Lavan objectors' reference to the State Government refusal of the Vasse Coal Project is irrelevant.
- 33 A major portion of the relevant licences in the area are producers licences and may have cellar door facilities and such premises are not comparable to the applicant's traditional packaged liquor services.
- 34 There is no evidence as to incremental offence, annoyance, disturbance and inconvenience and the applicant's evidence suggests that the available parking will be adequate.
- 35 There is no assurance as to integrity of the data in respect of the questionnaires and surveys and they lack statistical independence and collectively are not statistically valid.
- 36 The key findings of the Urbis Report in support of the application were that the impacts on, in particular the Margaret River Hotel Bottleshop, Settlers Liquor Store and Margaret River Resort ("Bottlemart") of opening the proposed liquor store:
- "are considered to be of an order which can be adequately absorbed by these stores and will not adversely affect the overall provision of goods and services to the community over time."*
- 37 Furthermore, the Spawton Report concluded that "the market and product range of the proposed Liquorland store will neither deter winery visits, nor cellar door purchases by tourists to Margaret River and the Abercromby Report concluded that "the establishment of Liquorland in Margaret River would not stop people from visiting local vineyards and microbreweries in the region".
- 38 The Carlsen Declaration which claimed that as a result of the liquor store "there would be a massive effect on cellar door sales in the region which would be devastating and see the demise of the region as it is known." is purely speculative and not evidence based. Similarly, there is no evidence to suggest that the liquor store will have a detrimental impact on non-licensed retail outlets in Margaret River.
- 39 Ms Rosemary Rosario's statement as an architectural heritage consultant is made

without having seen the proposed designs for the liquor store and is unsupported by any analysis, evidence, photographs or reasoning.

- 40 The assertion that there are already adequate liquor outlets in the locality ignores the results of the intercept surveys and ignores the comprehensive audit of licensed premises within 8 km of the liquor store in the Bodhi Report.
- 41 No relevant, cogent or probative evidence is provided to establish that the liquor store will lead to the increased consumption of alcohol or a greater prevalence of anti-social behaviour – the only evidence offered in support is the “Cheap Drinks” Report which only contains generalised evidence having no relation to the circumstances of the application and the DAA Report concluded that “quite simply the Cheap Drinks survey is too superficial for much weight to be attached to it”.
- 42 The applicant acknowledges that Margaret River is a well recognised tourist region with an established wine industry but the Lavan objectors have not provided cogent evidence to establish that there is a clearly defined “Margaret River brand” or that the grant of the application will negatively impact on the brand (assuming it is a relevant public interest factor which is disputed). In addition, the applicant refutes the Lavan objectors’ submission on the following basis:
  - a) The presence of the (nationally branded) liquor store in Margaret River will not (emphasis added) affect Margaret River’s “small country town” character and appeal as a tourist destination.
  - b) On the Lavan objectors’ own evidence the Margaret River town site already contains many national and international chains.
  - c) It is clear, even taking into account the statement of Ms Rachel Ann House-McLeod, Business Manager of Settlers Tavern (in which errors are noted) that over a quarter of the businesses located in the Margaret River town centre are nationally branded retailers or branded franchises.
  - d) Even if the Commission accepts that there is a “Margaret River Brand” on the Lavan objectors’ own evidence, the “Margaret River Brand” comprises a wide range of elements, including the natural environment (e.g. forests, caves and beaches), gourmet food, production (including cheese and chocolate), restaurants, wine tourism, surfing, arts and crafts (including furniture, jewellery, and painting), most of which the liquor store will not affect.
  - e) The Mazzarol Report’s conclusion that “*Liquorland has a business model with a focus on volume discounting of major wine brands*”. is flawed as the Urbis Report states that the 3 existing retail liquor outlets in the Margaret River town centre all offer bulk discounts on wine purchases of 10% for 6 or more bottles and is based on the incorrect assumption that the liquor store would have the same product range as Liquorland stores elsewhere.
  - f) The Carlsen Declaration is relied on by the Lavan objectors to support the

assumption that the liquor store is inconsistent with the Margaret River “brand”. The Carlsen Declaration expressed the opinion that the liquor store would have an immediate impact on the valuable brand and this would seriously affect tourism and in addition suggested that if the liquor store was established “the local wine industry, tourism industry and wine tourism industry would all suffer considerably”. The Carlsen Declaration referred to no evidence, studies or relevant examples to support its conclusions which are merely unsubstantiated opinions and should be given little weight by the Commission.

- g) On the contrary, the Urbis report goes on to say *“to suggest that international renowned wine and culinary regions are devoid of mass market outlets is entirely inaccurate ... the presence of these chains, selling a range of liquor that is not necessarily local, does not harm the unique reputation and brand that has been established in those regions. Tourist continue to visit in huge numbers”*.
- h) Additionally, the Spawton Report concluded that *“there is no research or evidence to suggest that the presence of a liquor store operates to the detriment of the brand salience of either region”*.

#### **Determination**

- 43 This application for the establishment of a Liquorland liquor store at 132 Bussell Highway, Margaret River 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 Woolworths Limited.
- 44 The applicant and the objectors are aware of the application lodged by Woolworths Limited for the conditional grant of the liquor store licence at premises associated with a Woolworths supermarket. That application is not considered to be a ‘competing’ application and was heard separately from this application.
- 45 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 of 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”.*

46 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.

47 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).

48 Lastly, 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 Pty Ltd v Director of 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.

- 49 The objectors lodged extensive material. However, the Commission is only interested in cogent evidence in establishing the objection.
- 50 In assessing the application the Commission adopted what appeared to be the commonly held view of all parties 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.
- 51 On this definition, although the resident population was approximately 11,771 based on census results of 2011, 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.
- 52 The applicant is seeking to establish a liquor store of 157 m<sup>2</sup> in close proximity to Coles supermarket. The store is relatively moderate in size by WA standards.
- 53 The objectors raised the issue of outlet density arising out of this application and the parallel application by Woolworths for a liquor store not far distant and also the allegation of cheaper liquor leading to harm and ill-health.
- 54 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 within the context of the Objects of the Act.
- 55 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 conclusion of this body of research are viewed.
- 56 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.”*
- 57 The Commission accepts the position that there is a well demonstrated correlation between outlet density and harm and ill-health. It also accepts that a direct causal relationship has not been demonstrated to an accepted epidemiological standard. However, the Commission holds that the strong correlation demonstrated between outlet density and harm makes it a relevant issue in establishing where the public interest lies.

- 58 It is therefore a matter for the Commission to determine whether the granting of the licence, and possibly a second new licence from the Woolworths application is consistent with the objects of the Act.
- 59 There were 32 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 who lodged objections.
- 60 The grounds of the objections were that the applications were 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.
- 61 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. Furthermore, they failed to acknowledge that discounting of liquor was already undertaken by existing outlets.
- 62 The focus of the objectors' case was on the "brand" or image of Margaret River state wide, 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. It was submitted that the establishment of a "national chain" outlet would seriously diminish if not destroy this carefully built branding.
- 63 The Commission accepts that Margaret River is a "special area" with its own 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 small outlet as an adjunct to a supermarket will damage the carefully cultivated image of the Margaret River Township and the Margaret River wine region.
- 64 Overall, there was little cogent evidence submitted to suggest that it would. The objector's case was predicated more on emotion than demonstrable outcomes.
- 65 The Commission did not accept the contention of the Carlson statement that the image of Margaret River would be irreparably damaged by the granting of the application as it appeared to be predicated more on opinion than specific reasons or evidence.
- 66 The Commission viewed the submission by Tim Mazzarol in a similar light.
- 67 Whilst acknowledging some shortcomings in the DAA, Urbis and Abercromby reports noted by the objectors, overall the Commission preferred this evidence as being more objective and generally more convincing.
- 68 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.

- 69 Whilst it is the conclusion of the Commission that not all the objectors have 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.
- 70 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”.
- 71 The Commission accepts that 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. However, it is the Commission's view that notwithstanding the objectors claim that outlet density is already high, as the applicant points out, the number of licences is high because of the number of restaurant and producer licences. The number of packaged liquor outlets similar to that for which the applicant is applying is actually quite low and would result in no undue harm or ill health being caused as a result of grant of this application.
- 72 Moreover, whilst the proposed liquor store is a stand alone shop in the main street the Commission remains unconvinced that the signage, shopfront and presentation generally of this size of liquor store will have a deleterious impact on the image of the main thoroughfare of the town, detract from the streetscape or lead to any loss of amenity in any way. There was no specific evidence led that it would do so. It was simply the opinion of the objectors.
- 73 In assessing the application, 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 the licence will result in any negative impact on the amenity of the area nor will it have any real impact on the “branding” of the Margaret River region about which the objectors are so understandably concerned.
- 74 In *Repertoire Wines Pty Ltd v Director Liquor Licensing and Others LC 40/2011* at para 58, the Commission stated.....

*“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”.*



- 75 The Commission has carefully weighed the objectors' point of view against the broad public interest which must incorporate the interest of the large transient population of tourists, visitors etc as well as residents supporting the application.
- 76 The Commission does not see the granting the application for a shopfront liquor store in the retail strip close to the Coles supermarket as being detrimental to the amenity of the region. It is the Commission's view that the added competition and convenience afforded, especially to the residents by the grant of the application is a significant public interest consideration.
- 77 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.
- 78 Accordingly, the application is granted.

A handwritten signature in black ink, appearing to read 'Jim Freemantle', written over a horizontal line.

**MR JIM FREEMANTLE**  
**CHAIRPERSON**