

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

Applicant: Independent Liquor Merchants Pty Ltd
*(represented by Mr Mario Sequeira of Hospital
Total Services (Australia) Pty Ltd)*

First Intervener: Commissioner of Police
*(represented by Mr Nicholas Van Hattem of State
Solicitor's Office)*

Second Intervener: Director of Liquor Licensing
*(represented by Mr Nicholas Van Hattem of State
Solicitor's Office)*

Objectors: AMAC & John Investments Pty Ltd
AE Vintners Pty Ltd
*(both represented by Peter Fraser of Dwyer
Durack Lawyers)*

Mr Philip M Edwards

Commission: Mr Jim Freemantle (Chairperson)
Mr Michael Egan (Member)
Dr Eric Isaachsen (Member)

Date of Determination: 15 October 2014

**Determination
(on papers):** The application is dismissed and the decision of
the delegate of the Director of Liquor Licensing is
affirmed.

Authorities referred in this determination:

- *Hancock v Executive Director of Public Health [2008] WASC 224*
- *Busswater Pty Ltd v Director of Liquor Licensing LC17/2010*
- *Harold Thomas James Blakely v Director of Liquor Licensing LC 44/2010*
- *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd [2007] WACA 175*
- *Palace Securities Pty Ltd v Director of Liquor Licensing (1192) 7 WAR 241*
- *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142*
- *Palace Securities Ltd v Director of Liquor Licensing supra*
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WACA 258)*

Background

- 1 This matter comes before the Liquor Commission (“the Commission”) by way of an application pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”) for a review of the decision by the delegate of the Director of Liquor Licensing (“the Director”) to refuse the conditional grant of a liquor store licence to Independent Liquor Merchants Pty Ltd (“the applicant”).
- 2 The applicant lodged an application on 6 December 2013 for a liquor store licence for premises, to be known as Cellarbrations Mosman Park, comprised of a shop, among other retail shops and stores, including a Coles Supermarket, at Mosman Park Shopping Centre.
- 3 The application was advertised to the general public in accordance with instructions issued by the Director.
- 4 The Commissioner of Police (“the Police”) lodged an intervention pursuant to section 69(6)(c)(ii) and (iv) of the Act on 3 February 2014
- 5 Mr Philip M Edwards lodged a notice of objection on 5 February 2014.
- 6 AE Vintners Pty Ltd (licensee of Liquor Barons Mosman Park), and AMAC and John Investments Pty Ltd (licensee of Mosman Heights Liquor Store) also lodged notices of objection (together referred to as the “licensee objectors”). Although not all the documents accompanying this notice of objection were received until 12 February 2014, five days after the period for lodging objections ceased, the Director found the applicant had suffered no prejudice by this minor delay and allowed the objections to be heard.
- 7 The Director considered the application on the papers pursuant to sections 13 and 16 of the Act, and determined to refuse the application, publishing his reasons in decision A224353 dated 7 July 2014.
- 8 The applicant lodged an application for a review of the decision of the Director pursuant to section 25 of the Act on 14 July 2014, and submitted a detailed submission in support of the review application on 9 September 2014.
- 9 One of the licensee objectors, AE Vintners Pty Ltd, lodged a submission in response to the review application. The other licensee objector did not participate in the review proceedings as AMAC and John Investments Pty Ltd had sold the Mosman Heights Liquor Store and, as such, is no longer an interested party.
- 10 Submissions were also received on behalf of the Director on 10 and 16 September 2014 and on behalf of the Police on 10 September 2014.
- 11 The applicant has elected to have the review determined on the papers in accordance with section 16(2) of the Act.

Submissions on behalf of the applicant

- 12 In the Public Interest Assessment (“PIA”) accompanying the application, the applicant expresses a desire to establish and operate a liquor store with a genuine focus on meeting the needs of the local community and to enhance the amenity of the local area.

- 13 More specifically, the applicant proposes to provide a range of liquor products to cater to the needs of the local residents who have food allergies, highlighting that up to 19.6% of the population in Australia have some kind of food allergy and that this segment of the population is “a growing and under-catered for side of the liquor industry”.
- 14 The applicant also proposes to stock a selected range of South African liquor products to cater to the higher than average representation of South African born persons residing in the locality. Rare wines, brands and vintages not readily available in other liquor stores will also be provided.
- 15 Positioning itself as an independent liquor store, that is, independent of the “large discount chain liquor stores”, the applicant submits the proposed liquor store will add convenience to the amenity by giving patrons the opportunity to purchase their alcohol requirements at the same time as they undertake their other household shopping.
- 16 The Mosman Park Shopping Centre, in which the proposed liquor store would be located, comprises a wide range of other retail outlets, including:
 - Café/take away food shop
 - Pharmacy
 - Australia Post outlet
 - Fresh fruit and vegetable shop
 - Hairdresser and Beauty Salon
 - Butcher
 - Bakery
 - Newsagency
 - Coles Supermarket
- 17 In addition to being more convenient to those people who shop at the Mosman Park Shopping Centre, a convenient “one-stop” shopping opportunity shall better cater to the growing number of the local population in the 60-84 year old age group.
- 18 Some 153 customer survey forms and five letters of support were lodged with the PIA.
- 19 According to the applicant: *“the consumer surveys completed by members of the local community...strongly indicate the need for a local, independent liquor store within the Mosman Park Shopping Centre that provides the convenience of purchasing liquor at the same time as doing other household shopping.”*
- 20 The customer survey conducted by the applicant sought responses to the following propositions:
 1. *I believe the option to purchase my liquor requirements when I am doing my grocery (and other) shopping at the Mosman Park Shopping Centre to be advantageous to me, as it saves time and money.*
 2. *It will add to the amenity available in the area by providing options such as dietary-specific alcohol products, and rare wine, brands and vintages that are not readily available in the locality.*

3. *I am interested in style (sic) and manner of trade of the proposed "Cellarbrations Mosman Park" liquor store operation.*
 4. *I see no need in having a Liquor Store within the Mosman Park Shopping Centre.*
 5. *The existing packaged, take way liquor store venues in Mosman Park satisfy my packaged liquor requirements.*
 6. *If this application was granted, I would most likely visit the licensed "Cellarbrations Mosman Park": once a week, once a month, unsure or not at all.*
- 21 Perhaps not surprisingly given the nature and wording of the survey, an overwhelming number responded positively to the first three propositions. No one responded to propositions four and five, and approximately 75 % of respondents indicated they would shop once a week at the proposed store.
 - 22 One respondent indicated a specific preference for speciality dietary liquor products .
 - 23 Two of the five letters of support are from suppliers and the remaining three appear to be from friends or acquaintances of the applicant, one of which concurs with the other letters of support (suggesting the contents of the letters may be known to all the signatories).
 - 24 The applicant also lodged as part of its submissions to the Director a signed petition and pro-forma letters of support from the various business owners or managers of stores (except the Coles Supermarket) within the shopping centre.
 - 25 The petition states that "the liquor store application is in the public interest and (the liquor store) is needed within the Mosman Park Shopping Centre". In the pro-forma letter, each signatory states that during his or her period as manager or proprietor at their respective shop; I have had numerous patrons ask me "Where is the closest bottle shop from here? Why isn't there a liquor store in the shopping centre?"
 - 26 In assessing the relevant factors in section 38(4) of the Act to demonstrate the application is in the public interest, the applicant contends:
 - 1 The public interest will be served by:
 - the availability of a range of products not widely available in the locality, including low alcohol, organic, gluten and preservative free products;
 - an interactive touch screen system in the store for customers convenience;
 - the applicant's strong ties with the local community (which are not specified) and the applicant's intention to sponsor a number of community organisations thereby demonstrating the applicant is a "strong supporter of a healthy active lifestyle";

- offering convenience, particularly to the older age group in the area;
 - stocking a wide range of low alcohol wine and beer, thereby providing the community with a choice of products for more health conscious people.
- 2 Harm or ill-health would be eliminated or reduced by:
- adopting the principles in the “Designing out Crime Planning Guidelines” produced by the WA Planning Commission;
 - careful planning along with the specific product range offered;
 - implementing an effective and robust harm minimisation strategy.
- 27 Although the rate of alcohol related hospitalisations for Mosman Park is well above the State average, particularly for males (with a SRR of 1.40 for males and 1.115 for females), the applicant contends the proposed store would not contribute to alcohol related hospitalisations due to the “previous experience (of the applicant) operating a liquor licensed premises with no known infringements issued against them, the strict Harm Minimisation Plan that will be implemented, and the style and product range of the proposed store.”
- 28 Having spent “a considerable amount of time into (sic) researching the need for the proposed store”, the applicant believes the proposed store will:
- not negatively or adversely affect the locality, rather it will add to the diversity available; and
 - enhance the vibrancy of the existing shopping centre by enabling persons who shop there to have access to a range of allergy free liquor products and greater convenience and choice saving them time and money.
- 29 The Code of Conduct and Harm Minimisation Plan together with the first hand experience of the applicant will, according to the applicant, ensure that “appropriate behaviour will be observed by patrons, staff and management of the premises”.
- 30 In relation to the other liquor stores in the locality, the applicant submits that the stores:
- do not stock the same specialty products as those proposed;
 - have very limited parking in some cases; and
 - whilst meeting the needs of their own customers, do not meet the needs of the residents of Mosman Park (and surrounding area) who shop at the Mosman Park Shopping Centre.
- 31 Many of the conditions proposed by the Police formed part of the original application. In respect of those conditions that did not, the applicant accepts all the conditions recommended by the Police.

Submissions on behalf of the Commissioner of Police

32 The Police intervened for the purpose of making representations on the ground that:

If a particular application was granted and/or conditions not imposed public disorder or disturbance would be likely to result, or as to any other matter relevant to the public interest.

33 The Police made various submissions and expressed a number of concerns, including:

- the small number of consumer surveys and letters of support relative to the population of the locality is insufficient to demonstrate the grant of the licence is in the public interest;
- the six liquor stores within the defined locality, the nearest of which is approximately 400 metres from the proposed store, sufficiently cater to the requirements of consumers;
- the applicant had failed to contact community service providers of the “at risk” groups in the area (as has been pointed out by the applicant this is not correct, at least to the extent “at risk” groups were advised of the proposal and no objections were received – not all groups were actually spoken to);
- the applicant has not demonstrated that the proposed licensed premises will result in the further development of the liquor, tourism and hospitality industry;
- the “pairing” of, and convenience of “one-stop” shopping for, alcohol products with grocery items can adversely affect “at risk” groups and facilitate “opportunity or impulse buying” of alcohol, thereby potentially increasing alcohol consumption and alcohol related harm in the community;
- the increase in the density of liquor stores in the locality would potentially affect the high number of “at risk” groups particularly children of school age and young people frequenting the area;
- the applicant has not proposed any specific harm minimisation strategies for the identified “at risk” groups;
- if granted, the licence should be conditioned with a particular emphasis on prohibiting external advertising, and the entry of juveniles during school term dates.

34 In response to the application for review and the applicant’s further submissions, the Police also submitted:

- the applicant’s survey has not demonstrated a requirement for the proposed products and services, highlighting the number of respondents to the consumer survey who live outside the locality (defined by reference to a 2km radius in accordance with the Director’s guideline on PIA’s); and

- there is no basis for suggesting, as has been put forward by the applicant, that the Executive Director of Public Health (who was notified of the application) would have intervened if there was the slightest risk of harm or ill-health, as there may be any number of reasons for the decision not to intervene.

Submissions on behalf of Mr Philip M Edwards

- 35 Mr Edwards, who is a director of the licensee objector (Liquor Barons Mosman Park) provided a number of customer survey forms and objected on the grounds:
- there are ample liquor retailers in the locality with good service and varied liquor products; and
 - there are numerous schools in the locality thereby increasing the risk of underage persons purchasing liquor at the Mosman Park Shopping Centre.
- 36 The pro-forma surveys lodged by Mr Edwards sought to demonstrate, among other things, that there are “enough liquor stores in Mosman Park area to cater for consumers needs” and that there is sufficient variety available.

Submissions on behalf of licensee objectors

- 37 The licensee objectors relied upon a number of grounds under section 74(1) of the Act, most specifically:
- the grant of the licence would be contrary to the principal objective contained in section 5(1)(c) of the Act in that the grant will not cater to the requirements of consumers as:
 - i. the locality is already well serviced by a number of well established liquor outlets;
 - ii. consumer requirements are presently being met, including any requirements for speciality products;
 - iii. the proposed store will not result in the further development of the liquor, tourism and hospitality industry, but will constitute an unnecessary replication of liquor facilities available in the locality;
 - the grant of the application will result in an unacceptable increase in harm and/or ill-health to “at risk” groups and consumers; and
 - the duplication of services and the increase in density of alcohol outlets may result in an unacceptable increase in the levels of violence currently experienced in the area.
- 38 In support of these grounds of objection the licensee objectors highlighted and submitted a number of studies and reports:
- on the correlation between an increase in the density of liquor outlets:
 - i. youth drinking (a media report on research undertaken by Deakin University, 2013); and

- ii. rates of violence (a longitudinal study into Violence in and around Entertainment Districts undertaken by the University of Denver, 2011);
 - on the risks associated with “impulse buying” particularly in respect of packaged liquor products (unpublished report on research into “*Impulse Purchase of Alcohol*” undertaken by Professor Rob Donovan, 1998);
 - on crime statistics for the locality (Office of Crime Prevention, Town of Mosman Park, 2009-2010).
- 39 The licensee objectors also submitted the report on the evaluation of the *Local Government Alcohol Management Project* between April 2009 and April 2010. As was pointed out by the applicant, the direct relevance of some of these reports to the current application was not demonstrated.
- 40 In response to the review application, the sole licensee objector (licensee of Liquor Barons Mosman Park) submitted that quite apart from the concerns expressed by the interveners’ and the various grounds of objection put forward by the objectors, the applicant has failed to demonstrate there is a requirement of consumers for the proposed licensed premises as the consumer survey undertaken by the applicant is flawed and of limited probative value in that:
- respondents were not asked about their requirements for South African products;
 - it cannot be determined which particular type of product the respondents have a requirement for due to the compound nature of the statement about the various types of liquor proposed;
 - acknowledging the proposed store will add to the amenity of the area is different to determining whether or not consumers have a requirement for a particular service;
 - whilst acknowledging that the option to purchase liquor requirements when shopping at the Mosman Park Shopping Centre would be advantageous and there is some evidence the proposed store would provide respondents with a choice of purchasing liquor when shopping, it is not evidence of what range of products they would purchase or which products they currently have difficulty acquiring;
 - a failure to respond to, or acknowledge, the statement: “The existing packaged, take way liquor store venues in Mosman Park satisfy my packaged liquor requirements” in the survey form does not reveal what requirement is not being satisfied.

Submissions on behalf of the Director of Liquor Licensing

- 41 Essentially, the submissions on behalf of the Director contend that the Director’s decision is well reasoned and soundly based on the evidence presented with the application.
- 42 It is submitted that the consumer survey of the applicant does not support the contention there is a demand for South African liquor products or allergen free products as the reference to the various products forms part of a compound

proposition that “dietary-specific alcohol products and rare wine, brands and vintages” are not readily available in the locality. As a consequence, it is submitted the Director correctly concluded it is unknown what information informed the respondents’ views when they completed the survey.

- 43 It is further submitted that the Director correctly concluded that the significance of the opportunity for one-stop shopping is overstated. Although one-stop shopping is a relevant consideration and may be of importance in some circumstances and in some areas, such as a large district or regional shopping centre, the proposed store is part of a neighbourhood shopping complex not a large suburban shopping centre. Further, it is submitted, the convenience of one-stop shopping is readily available in another larger shopping centre approximately 1.4 km away.
- 44 Whilst it is acknowledged the Director did not explicitly find the application is likely to increase the level of alcohol related harm, the significantly higher rate of alcohol related hospitalisations than the State average in Mosman Park is a relevant consideration particularly having regard to the limited ability of packaged liquor outlets to control the environment and circumstances in which the alcohol is consumed.

Application for Review

- 45 The applicant has specified a number of grounds upon which the application for a review of the Director’s decision is based. Whilst it is not necessary to set out these grounds as the Commission is conducting a full review and making its own decision, it is relevant to outline the substance of the submissions made by the applicant in support of the review. In this respect, the applicant has pointed to:
 - the broad range of shops and services provided at the Mosman Park Shopping Centre, including the level of weekly visitation to the Coles Supermarket;
 - the Shoppa Bus Service provided by the Town of Mosman Park to residents aged between 60 and 84 to undertake their weekly shopping at the Mosman Park Shopping Centre (the number of residents utilising this service has not been provided);
 - the feedback from the Practice Manager of the local Health Welfare Clinic (a local provider of medical services in the locality) that the Clinic has no concerns with the proposed liquor store;
 - the failure of the objector Mr Edwards to declare his pecuniary interest in the application and to present any objective evidence to support his objection;
 - the absence of any objective evidence, such as product lists, from the objectors to support the contention Liquor Barons Mosman Park offers an extensive range of speciality products, particularly having regard to the fact the burden of establishing the validity of an objection rests with the objector;
 - the very small sample survey presented by the objector Mr Edwards;

- the significantly lower proportion of certain “at risk” groups in Mosman Park (i.e., lower than the State average), such as children and young people;
- the failure of the objectors to demonstrate the relevance of some of the studies and reports lodged with the objection;
- the statement in the Alcohol Related Hospitalisation report that the alcohol related hospitalisations were more related to “on premise” consumption;
- the lower than State average crime statistics for Mosman Park in all categories except residential burglary and theft;
- a previous decision of the Director to grant an application supported by a survey similar in nature to the survey adopted and used on this occasion;
- the fact no mention or, according to the applicant, no weight was given by the Director to the views of the small business owners in support of the application;
- the classification of the Mosman Park Shopping Centre as a neighbourhood shopping centre should not preclude it from offering one-stop shopping convenience as is enjoyed by other neighbourhood shopping centres throughout the State; and
- the factors which the applicant contends will aid the development of the liquor industry, namely:
 - i. a range of dietary specific liquor products;
 - ii. multiple support letters;
 - iii. one-stop shopping;
 - iv. unique Australian and international products; and
 - v. a unique interactive touch screen.

Determination

- 46 Section 25(2c) of the Act provides that when conducting a review of a decision of the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- 47 In conducting a review pursuant to section 25 of the Act, the Commission is not required to find an error in the Director’s decision. The Commission is required to undertake a full review of the materials before the Director and make its own determination on the merits, based upon those materials (*Hancock –v- Executive Director of Public Health [2008] WASC 224*).
- 48 Pursuant to section 25(4), the Commission may –
- a) affirm, vary or quash the decision subject to the review;
 - b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;

- c) give directions –
 - (i) as to any question of law, reviewed; or
 - (ii) to the Director, to which effect shall be given; and
- d) make any incidental or ancillary order.

49 Section 38(2) of the Act provides that an applicant must satisfy the licensing authority that granting the application is in the public interest. To discharge its onus under section 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community.

50 It is not enough that an applicant express assertions or opinions about the public interest; any assertion or opinion must be supported by an appropriate level of evidence (*Busswater Pty Ltd –v- Director of Liquor Licensing* LC 17/2010).

51 The private interests of an applicant do not equate to, and should not be confused with the public interest (*Harold Thomas James Blakely –v- Director of Liquor Licensing* LC 44/2010).

52 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*). 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.”

53 In determining whether granting an application is in the public interest, the Commission may have regard to the matters set out in section 38(4) of the Act, specifically:

- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
- (b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and

(c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises.

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

55 The objects with particular relevance to the application under review are:

Primary objects

5(1)(b): to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;

5(1)(c): to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State; and

Secondary object

5(2)(a): to facilitate the use and development of licensed facilities, including their use and development for the performance of live music, reflecting the diversity of the requirements of consumers in the State.

56 In the event of any inconsistency between the primary and secondary objects, the primary objects take precedence (section 5(3)).

57 Each application must be considered on its merits and determined on the balance of probabilities pursuant to section 16 of the Act. If a conflict arises between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WACA 258*).

58 The Commission is not bound by the rules of evidence and must act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms (section 16(7) of the Act).

59 The applicant has presented its application for a liquor store licence with a strong emphasis on the provision of liquor products for people suffering from food allergies and, to a lesser extent, liquor products of South African origin. The applicant contends there is an unmet demand for these products, most particularly the former, submitting that this segment of the population is “a growing and under-catered side of the liquor industry”.

60 The other distinguishing features of the proposed liquor store which the applicant has emphasised include:

- an interactive touch screen for consumers convenience and a product request system;
- the opportunity for “one-stop” shopping due to the location of the proposed store in a shopping centre close to a large supermarket;

- a service to seniors (aged between 60 and 84 years) residing in the locality to conduct “one-stop” shopping at the Mosman Park Shopping Centre facilitated by the Shoppa Bus service, a service provided by the local authority.
- 61 In other respects, whilst not specifically stated by the applicant, the proposed store would be a relatively large liquor store offering Western Australian, Australian and international liquor products in a not dissimilar manner to the six other liquor stores within the defined locality (that is, within a radius of 2 km of the proposed store).
- 62 There is a good deal of precedent in the form of the Commission’s previous decisions and in the Director’s Guidelines for the preparation of PIA submissions on the extent and standard of evidence required to satisfy the Commission an application is in the public interest. Two extracts from the Director’s Guidelines illustrate this point:
- In considering the public interest, applicants should demonstrate the positive aspects of their application (including the social, economic and health impacts). It is not sufficient for applicants to merely demonstrate that the grant of the application will not have any negative impact.
 - In decision [LC51/2011] the Commission stated: “...*the Applicant must present supporting evidence at the appropriate level to satisfy the Commission that there is a real and demonstrable consumer requirement to justify the granting of the licence...Information that would be probative to the Commission includes market surveys, petitions of substance and information that demonstrates a real consumer requirement.*”
- 63 The first consideration, leaving aside for the moment the potential for any harm or ill-health arising from the grant of the application, is whether the applicant has discharged its onus by demonstrating there is a real and demonstrable requirement of consumers for the liquor and related services proposed by the applicant within the meaning of sections 5(1)(c) and section 5(2)(a) of the Act.
- 64 The Commission is not satisfied the applicant has demonstrated that there is a significant requirement, or that a requirement exists at all, for specialty liquor products such as dietary-specific products, rare wine, brand and vintages, or liquor products of South African origin.
- 65 It is not sufficient, by itself, to point to the existence of a segment of the population that has particular characteristics, such as 19.6% of the Australian population who experience some kind of food allergy, or a percentage of local people who are South African born, to demonstrate a demand for a particular type of liquor product.
- 66 Further, the survey conducted by the applicant is of limited probative value to the Commission in assessing the demand for this type of product. There is no indication, apart from one respondent who expressed a preference for this type of product that the respondents require, or do not have access to, these products.

- 67 The applicant did not present to the Commission any evidence of its experience and sales of these special dietary products at its other liquor outlets and how that experience or demand might translate into the operation of the proposed store.
- 68 It is not clear, and there is no evidence to demonstrate, why people in the locality are thought by the applicant to have, or do have, a requirement for rare and vintage wines not otherwise available in the locality.
- 69 The survey also provides little or no evidence of an unmet demand for liquor of South African origin as there is no reference to this type of product in the survey.
- 70 Moreover, the surveys are of limited value in assessing whether the respondents' requirements are not satisfied by the existing liquor outlets in the locality, as it is not clear what motivated the respondents not to respond to the statement: "The existing packaged, takeaway liquor store venues in Mosman Park satisfy my packaged liquor requirements". Nor is it apparent why, and to what extent, existing liquor outlets do not satisfy their requirements.
- 71 Furthermore, the survey is based on the premise the option to acquire liquor products whilst shopping at the Mosman Park Shopping Centre is advantageous to the respondent because it "will save me time and money", not because the respondent's requirements are not being met at other liquor outlets. It is also not clear how the respondent could form the view the option would save him or her money given the price of the liquor products to be made available relative to other outlets nearby is not known.
- 72 In addition, it is not clear how the respondents are, or became, aware of the "style and manner of trade" of the proposed liquor store, or the particular features that informed or influenced their response to the proposition: "I am interested in the style and manner of trade of the proposed... liquor store operation."
- 73 Even the additional comments volunteered by respondents in support of a liquor store in the shopping centre do not provide probative, or any, evidence that the liquor requirements of the respondents are not being met at other liquor outlets.
- 74 It may be said that there is no opposition to the proposed liquor store among the respondents to the survey, but this is perhaps not surprising as any added convenience is generally not unwelcome by members of the public.
- 75 In the Commission's view, the probative value of the surveys is limited to evidence of a preference on the part of the respondents to have the option to shop at a liquor store within the Mosman Park Shopping Centre.
- 76 Beyond providing the option and, therefore, convenience of shopping for liquor products whilst otherwise shopping at the shopping centre, there is no evidence the local community's requirements are not satisfied by the many and varied existing liquor outlets in the locality.
- 77 Indeed, it is noteworthy that in addition to the liquor stores in close proximity to the proposed store (Liquor Barons Mosman Park and BSW, previously Mosman Heights Liquor Store), there are a further two liquor stores (Vintage Cellars and Liquorland Cottesloe), an extensive shopping precinct, a large hotel with another liquor outlet (Albion Hotel and BWS outlet) and a large shopping centre with a variety of shops (Cottesloe Central Shopping Centre) with extensive parking,

including yet another liquor store (Cellarbrations) only 1.4 km from the proposed store.

- 78 The level and extent of the demonstrated demand for the additional convenience the proposed store would offer is limited to the consumer surveys, a small sample of support letters and the support letters from the small shop owners and operators in the shopping centre. This is a very small sample.
- 79 The probative value of the letters of support is also limited. Without more detail of the actual knowledge of the shop managers and operators about the number of customers who have asked about a liquor store and their customers' requirements for liquor products, it is difficult to attach any weight to the pro-forma letters in assessing the demand for a liquor store in the shopping centre.
- 80 Clearly, the shop managers and operators would welcome a liquor store or, it is suggested, any viable and successful business in the proposed premises which, apparently, has been vacant for the past 12 months. However, that, of itself, does not satisfy the requirements of the Act. Private interest of those other businesses is not to be confused with the public interest to which the Act specifically refers.
- 81 The applicant submits that shoppers generally make a predetermined decision to purchase liquor when doing their grocery and other shopping, and that the proposed store will offer shoppers with the option and convenience to do so.
- 82 However, no evidence has been presented to demonstrate the accuracy of the proposition shoppers make predetermined decisions to purchase liquor when doing their grocery and other shopping. Indeed, there are many supermarkets and grocery stores in the State and the metropolitan area not located immediately adjacent to a liquor store and many more liquor stores not located adjacent to supermarkets or grocery stores.
- 83 The sale, supply and consumption of alcohol is different to other products and the controls and requirements contained within the Act are necessary for the overall benefit of the community. One of the important and fundamental controls is that a licence is not to be granted unless there is a real and demonstrable requirement for the liquor and related services proposed.
- 84 In considering the public interest, applicants are required to assess both the positive and negative impacts the grant of the application will have on the local community. As highlighted in the reference to the Director's Guidelines for the preparation of PIA submissions above, applicants are expected to assess and report on the social, economic and health impacts of a licence proposal.
- 85 In this case, apart from the additional convenience, there is no evidence of any significant community benefit likely to result from the proposal. Nor is there any, or any substantial, evidence of how the proposal will contribute to the proper development of the liquor, tourism and hospitality industries.
- 86 The proposed store would potentially add to the diversity of liquor stores available in the locality, but, to a significant extent, the proposed store would replicate the services already provided in the other outlets in the locality.
- 87 The requirement for an assessment of the economic, social and health impacts of any licence application, but in particular a liquor store licence application, is

also to identify, among other things, any potential harm or ill-health that may arise and how that harm would be managed and minimised.

- 88 The level of alcohol related hospitalisations and the crime statistics for Mosman Park have been referred to by both the applicant and the licensee objector as has the potential impact of the proposed store on “at risk” groups, particularly children of school age (given the number of schools in the locality).
- 89 Statistics from the Office of Crime Prevention for the Town of Mosman Park for 2009-2010 reveal that Mosman Park has rates of recorded crime lower than Central Metropolitan and Western Australia, with the exception of residential burglaries and theft.
- 90 Significantly, the Police have not provided any guidance on the incidence or location of crime or anti-social behaviour in the area. Without this information, it is difficult for the Commission to assess the potential impact of the proposed store on crime or anti-social behaviour in the immediate vicinity of the proposed store or more broadly in the local community.
- 91 It is appropriate for the applicant and the objectors to highlight the more significant “at risk” groups in the locality and the extent to which these groups have been consulted as it is important to assess why particular segments are at risk and how that risk could be mitigated.
- 92 However, the ground of objection from Mr Edwards that there could be an opportunity for underage people to purchase liquor while in the shopping centre is not supported by any evidence and has not been made out. As a director of the licensee of Liquor Barons Mosman Park close to a railway station and also in the locality, Mr Edwards should be able to shed some light on how significant this risk is. It is of no help to simply make an assertion that illegal or anti-social behaviour or some form of harm may result.
- 93 The applicant has demonstrated a limited degree of consultation with “at risk” groups. The engagement with the Health Watch Clinic in Cottesloe was appropriate but the same level of engagement has not been demonstrated with respect to some of the other “at risk” groups in the community. Although a level of community consultation is apparent (i.e., by letter, telephone or email), the level of real meaningful community engagement, the identification of any risks of harm and how those risks will be monitored and managed within a community framework is not readily apparent.
- 94 The level of alcohol related hospitalisations in the locality is a concern. If the introduction of an additional liquor store in the locality is likely to exacerbate this problem, the applicant also has not addressed in detail how the risk might be managed and minimised.
- 95 The assertion that the “previous experience operating a liquor licensed premises with no known infringements issued against them, the strict Harm Minimisation Plan that will be implemented, and the style and product range of the proposed store” demonstrates that the proposed store “will not contribute to alcohol related hospitalisations and deaths in the area” gives the Commission little assistance in judging how the risk will be monitored and mitigated.

- 96 Ultimately, in light of the Commission's finding that the applicant has not demonstrated there is a requirement of consumers for the liquor and related services proposed in the application within the meaning of section 5(1)(c) of the Act, it is unnecessary to reach a final view on whether the application, if granted, would give rise to any harm or ill-health to require the Commission to embark on a "weighing and balancing" exercise to determine if the benefits of the application outweigh any such harm or ill-health that may be likely to arise.
- 97 The applicant has failed to discharge its onus under section 38(2) of the Act and the application is, therefore, refused.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a long horizontal stroke.

JIM FREEMANTLE
CHAIRPERSON