

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

- Applicant:** Woolworths Ltd  
*(represented by Mr Henry Jackson, instructed by  
Mr Tony Schwartz of Back Schwartz Vaughan)*
- Intervener:** Director of Liquor Licensing  
*(represented by Mr Jesse Winton of State  
Solicitor's Office)*
- Objector:** Mr Adam Riley  
*(not represented at the hearing)*
- Commission:** Mr Eddie Watling (Deputy Chairperson)  
Mr Michael Egan (Member)  
Mr Alex Zilkens (Member)
- Matter:** Application pursuant to section 25 of the *Liquor  
Control Act 1988* for a review of a decision by the  
delegate of the Director of Liquor Licensing to  
refuse a grant of a liquor store licence for premises  
to be known as *BWS Falcon*.
- Premises:** BWS Falcon, Miami Plaza Shopping Centre, 3  
Olive Road, Falcon
- Date of Hearing:** 18 October 2016
- Date of Determination:** 23 December 2016
- Determination:** The application for review is refused.

**Authorities referred to in Determination:**

- *Woolworths v Director of Liquor Licensing* [2013] WASCA 227
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Executive Director Public Health v Lily Creek International Pty Ltd* [2000] WASCA 258; (2000) 22 WAR 510
- *Hancock v Executive Director of Public Health* [2008] WASC 224).
- *Liquorland (Australia) Pty Ltd v Commissioner of Police and Others* LC 18/2015
- *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* {2013} WASC51 [57]:
- *Woolworths Limited v Director of Liquor Licensing* [2012] WASC 384

## **Background**

- 1 On 26 November 2015, Woolworths Limited (“the applicant”) lodged an application for the grant of a liquor store licence for premises to be known as “BWS Falcon”, to be situated within the Miami Plaza Shopping Centre in Falcon (“the Centre”). The application is supported by a Public Interest Assessment (“PIA”) and a number of relevant attachments, including a market survey report prepared by West Coast Field Services (“Community Survey”).
- 2 On 7 January 2016, an objection to the application was lodged by Mr Adam Riley, the owner of Liquor Baron Seascapes at Halls Head.
- 3 The applicant lodged a responsive submission to the objection on 9 March 2016 and on 23 March 2016 lodged a closing submission.
- 4 On 3 May 2016, pursuant to section 16(1)(b)(i) of the *Liquor Control Act 1988* (“the Act”), the Director of Liquor Licensing wrote to the Commissioner of Police (“the Police”) and the Executive Director of Public Health (“the EDPH”) requesting a report on the crime and health data, particularly any trending data, relevant to the application.
- 5 The requested reports were received from the EDPH and the Police on 7 May 2016 and 9 May 2016 respectively.
- 6 On 19 July 2016, the delegate of the Director of Liquor Licensing (“the Director”) refused the application on the basis that the potential negative impact of introducing a further convenience style packaged liquor outlet in this locality, outweighs the marginal benefits of an increased level of convenience to some members of the community.
- 7 The applicant lodged an application for a review of the Director’s decision on 22 August 2016 with submissions being received from both parties over the ensuing period to 11 October 2016.
- 8 A hearing of the application for review was held on 18 October 2016.

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

- 9 The proposed BWS liquor store will have a footprint of 172m<sup>2</sup> and be located adjacent to an existing Woolworth’s supermarket within the Centre. Access will be obtained through the Centre. The proposed liquor store will have no external access. Its opening hours will mirror those of the Centre– 8:00am to 6:00pm Monday to Wednesday, Friday and Saturday, 8:00am to 9:00pm on Thursday – except that it, unlike the Centre, will be closed on Sundays.
- 10 It is submitted by the applicant that there are, literally, hundreds of very similar BWS/Woolworths Liquor premises around Australia and there has been for

decades. They are ubiquitous because Woolworths provides excellent service and products within safe, clean, well designed and modern premises. The Liquor Commission of WA (“the Commission”) has commented favourably in this regard in relation to many such applications.

- 11 The applicant submitted that in the present case, the relevant matters for consideration are:
  - (a) the extent to which the application will cater for the requirements of consumers for liquor and related services, with regard to the proper development of the industry, the tourism industry and other hospitality industries in the State – section 5(1)(c) of the Act; and
  - (b) the extent to which the application will contribute to alcohol related harm and ill-health – section 5(1)(b) and section 38(4)(a) of the Act.
- 12 As to the benefits of the application, the Director found that they were “diminished to a great extent by the close proximity (a distance of approximately 200 metres) of the First Choice Falcon store which is a large destination liquor outlet, with a significantly larger range of products on offer than what the applicant proposes.
- 13 However, with respect to catering for the requirements of consumers, the applicant has submitted:
  - (a) the application is for a packaged liquor store in a locality which has one of the fastest growing populations in Australia - at the time of the 2011 census its population was 4,666, which by 2015 is expected to rise to 5,235 and by 2036, 6,276, an expected increase of nearly 20% between 2015 and 2036;
  - (b) there are presently very limited options within that locality as to packaged liquor – there are only two other stores, one is the stand-alone large format store, First Choice Falcon, and the other, Port Bouvard Liquor and Mart, a small convenience store located within a residential area some distance away (2.5 km in a straight line) in Wannanup;
  - (c) neither of the two existing package liquor stores provides the ability for residents and visitors to buy liquor together with their grocery shopping;
  - (d) the application received strong support in the Community Survey, principally on the grounds of choice and convenience; and
  - (e) the locality falls within a well-recognised tourist area.
- 14 The applicant has highlighted the fact that combining grocery shopping at the Woolworths supermarket with liquor purchases at First Choice Falcon requires

either a separate car trip, or a round trip on foot from the supermarket (presumably pushing a loaded shopping trolley) of 400 metres.

- 15 The applicant submitted that the Court of Appeal in *Woolworths v Director of Liquor Licensing* [2013] WASCA 227 [78] (“the Bicton decision”) confirmed as a “notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially for working people, and this social fact is reflected in the development of district and regional shopping centres”.
- 16 The applicant referred to the witness statement of Mr Shane Tremble, Head of Corporate Development for the Woolworths Liquor Group where he asserted: “Modern day consumers of packaged liquor want, and expect, diversity of choice in packaged liquor. They want to be able to pick and choose where they go to purchase their packaged liquor depending on their particular *purchase occasion* needs”.
- 17 Mr Tremble further asserts that “this is particularly relevant in an age where people are time poor and, as an example, where a liquor store adjacent to a supermarket in a shopping centre appeals to, and provides for, a mother who wants to purchase some wine for the weekend at the same time as doing her other food shopping in a safe, familiar and convenient environment”.
- 18 In short, the applicant contends that the application will, if granted, cater to the requirements of consumers for liquor, notwithstanding that there already is a large format liquor store nearby.
- 19 According to the applicant, there is no proper basis to say that the application will, if granted, result in a level of alcohol related harm or ill-health that is cause for concern. Rather, there is a proper basis to say that there is:
  - (a) an existing level of alcohol related harm or ill-health that is comparable to that of the general community; and
  - (b) nothing to suggest that the application, if granted would result in an increase in the level of harm at all.
- 20 The applicant acknowledged that there are indicators which suggest there is a degree of relative disadvantage within the locality: unemployment levels are higher than the State average, there are more single-parent families than the State average, and the Social Economic Indexes for Areas (SEIFA) rankings show relative disadvantage. However, it is also relevant to note that other indicators show that there are lower levels of at-risk groups within the locality.
- 21 The applicant submits that disadvantage is not, in itself, sufficient to warrant a refusal of an application. Rather, it is necessary to consider whether the

disadvantage within the locality (and not just at some generalised level) is associated with corresponding levels of alcohol related harm and ill-health.

- 22 Significantly, according to the applicant, in this locality, there is nothing to show that any such disadvantage manifests as higher levels of alcohol related harm and ill-health which is evidenced by:
- (a) the fact no objection to the application has been lodged by providers of front-line services to those suffering from ill-health or harm caused by alcohol use or misuse;
  - (b) the EDPH has not intervened in the application and the Police has neither objected nor intervened;
  - (c) the evidence as to the present level of alcohol related harm and ill-health contained within the reports of the Police and the EDPH indicates that:
    - (i) the contrast between the rates of alcohol related domestic assaults and alcohol related non-domestic assaults suggests that there is a factor other than alcohol at play (i.e. if alcohol was the causative factor, those rates ought to be much more aligned);
    - (ii) the hospitalisation rates for alcohol related illnesses suggest that the locality is not consuming alcohol at dangerous levels, which supports an observation that a factor other than alcohol must be causing alcohol related domestic assault rates for the locality to exceed levels for other areas; and
    - (iii) non-alcohol related rates of domestic assaults were higher in 2015 (albeit that they were comparable in the previous two years) indicating that factors other than alcohol are relevant in that case.
- 23 The applicant submits that while there is a doubt as to the power of the Police to provide the data that was provided, and the EDPH to make submissions, the data none-the-less can and should be read as supporting a conclusion that the existing level of alcohol related harm is no greater than that in the general community.
- 24 Further, any doubt in this regard ought to be considered in the light of the failure of the EDPH to intervene and the failure of the Police to either intervene or object – indicating a level of comfort by both with the application.
- 25 The applicant submits that the objective of the Act is one of minimisation of harm, not abolition, and that is reflected in the four steps identified in *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 [41][42] (“*Carnegies*”) where it was accepted that, in relation to alcohol related harm and ill-health, the Commission is required to:

- (a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
- (b) make findings about the likely degree of harm to result from the grant of the application;
- (c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- (d) weigh the likely degree of harm, so assessed, together with any other relevant factors to determine whether the appellant has satisfied the Commission that it is in the public interest to grant the application.

26 The applicant submits that in reaching his decision, the Director made no mention to the approach set out in *Carnegies* and, as a consequence, he fundamentally misconstrued the decision of Ipp J in *Executive Director Public Health v Lily Creek International Pty Ltd* [2000] WASCA 258; (2000) 22 WAR 510, [29] by apparently proceeding on the basis that a mere “possibility that the grant of the application may negatively impact on the local community” was sufficient to outweigh the benefits of the application. Such an approach, the applicant contends, is inconsistent with that in *Carnegies* because the Director never assessed the likelihood of that negative impact occurring should the application be granted.

27 In summary, the applicant submits:

- (a) for the reasons provided, there is a proper basis to say that the application will cater for the requirements of consumers for liquor with regard the proper development of the liquor, tourism and hospitality industries in the State;
- (b) there is no proper basis to say the application will, if granted, result in a level of alcohol related harm or ill-health that is a cause for concern; and
- (c) as a consequence, there are no negative aspects of the application which might be said to counter the established benefits, and the grant of the application is in the public interest.

### **Submissions on behalf of the Director**

28 It is submitted on behalf of the Director that the basis of the decision of the Director to refuse the application can be summarised as follows:

- (a) the extent of the benefit to the public through the added convenience of purchasing packaged liquor from the premises is diminished to a great extent by the close proximity of an existing packaged liquor outlet;
  - (b) the grant of the application would not add to the diversity of liquor products available in the area, as the existing packaged liquor outlet offers a significantly larger range of products than what the applicant proposes;
  - (c) the grant of the application may negatively impact the community in the locality, particularly when the social and demographic profile of the community is taken into consideration:
  - (d) Falcon is relatively disadvantaged, with high unemployment rates;
  - (e) socioeconomic status is a key indicator linked to alcohol-related harm and abuse in the community;
  - (f) there has been a significant increase in the rates of alcohol-related violence, and in particular domestic violence, in the locality; and
  - (g) academic research has found a strong, positive correlation between packaged liquor outlet density and rates of domestic violence.
- 29 It is submitted that the Director found that the evidence established a conflict in promoting the objects of the Act, with the competing interests being:
- (a) the benefit to some members of the community in having an increased level of convenience in purchasing packaged liquor when shopping at the Centre; and
  - (b) the risks associated with introducing a convenience-style packaged liquor outlet in a locality which is relatively disadvantaged and where there is an existing level of alcohol-related harm.
- 30 It was further submitted that the Director considered that greater weight should be given to the well-being of the local community than to the marginal benefits to flow to some members of the community if the application is granted.
- 31 It is submitted on behalf of the Director that the reasoning for the Director not being satisfied that the grant of the application is in the public interest is compelling because:
- (a) the evidence that the grant of the application would cater for the requirements of consumers for liquor and related services was equivocal;

- (b) the evidence that the grant of the application would promote the proper development of the liquor industry was tenuous; and
  - (c) there was compelling evidence that the grant of the application would, in the light of the existing level of alcohol-related harm and ill-health in the locality, result in an unacceptable degree of likely harm.
- 32 It was submitted that the results of the Community Survey relied upon by the applicant to show a consumer requirement only provide flimsy support for a finding that consumers require a further packaged liquor outlet of this kind. The data in fact tends to establish that consumers in the locality are satisfied with the existing package liquor outlets and do not express any requirement for the kind of store proposed.
- 33 With regard to the potential for an unacceptable increase in the level of harm and ill-health as a consequence of the application being approved, it is submitted that the evidence provided by the EDPH and the Police is also a relevant consideration.
- 34 The EDPH has provided the following data:
- (a) the unemployment rate in Falcon is 7.9% which is significantly higher than the State rate of 4.7%;
  - (b) Falcon is identified on the SEIFA indices as being statistically disadvantaged, receiving a score of three (out of a possible ten, with one representing the most disadvantaged communities);
  - (c) between 1 January 2013 and 31 December 2015 there were 172 treatment episodes in alcohol/drug agencies funded by the Mental Health Commission, of which 24% involved alcohol as the primary drug concerned (alcohol was identified as a drug of concern in 52% of all treatment episodes); and
  - (d) in 2012, Falcon-Wannanup residents were hospitalised a total of 46 times for conditions due to alcohol - these hospitalisations required a total of 256 bed days at an approximate cost of \$299,733.
- 35 It was further submitted that the Police data can be summarised as follows:
- (a) Between 1 January 2013 and 31 December 2015, there were 51 reported non-domestic assault offences in Falcon, more than one third (35.3%) of which were alcohol related. The number of alcohol-related non-domestic assaults also increased each year in the period. Significantly, in this same time period, the rate of alcohol-related non-domestic assaults in Mandurah, the South Metropolitan District (“the Region”) and the State of Western Australia decreased.

- (b) Between 1 January 2013 and 31 December 2015 there were 148 reported domestic assaults in Falcon, of which 47% were alcohol-related. The rate of alcohol-related domestic assaults also increased each year in the period and, ultimately, the rate of alcohol-related domestic assaults in Falcon nearly doubled to be more than twice the State rate. Significantly, during that period, the rate of alcohol-related domestic assaults in Mandurah, the Region and the State of Western Australia decreased.
- (c) During the period between 1 January 2013 and 31 December 2015, there were 42 drink driving incidents in which the suburb of last drink was named as Falcon. Of these, more than three quarters of the drivers (76.2% n=32) indicated that their last drink was consumed at a private residence, public place, or vehicle.
- 36 After identifying the existing level of alcohol-related harm and ill-health in the locality, it is submitted that the Commission is required to make a finding as to the likely degree of harm that may result from the granting of the application which will be a prediction by reference to a degree of probability.
- 37 In this regard, the EDPH has referred to several studies which show that, as liquor store numbers increase, so too does alcohol-related harm, such as violent assaults, child maltreatment, pedestrian injuries and injuries among young adults.
- 38 It is also submitted that the research evidence submitted by the EDPH demonstrates that the introduction of another packaged liquor outlet may increase the incidence of alcohol-related harm and ill-health already existing in Falcon, particularly considering the identified “at-risk” groups in the locality, as evident from the high unemployment rate and higher than average level of disadvantage being experienced in the locality.
- 39 It is, therefore, submitted that in the light of the existing level of alcohol-related harm in Falcon, the grant of the application may further impact negatively on the level of alcohol-related harm and ill-health in the locality and as a consequence, the marginal benefits that may result from the grant of the application are outweighed by the probable negative impacts.
- 40 The decision of the Director to refuse the application should, therefore, be affirmed.

### **Submissions of the objector**

- 41 Whilst the objector did not provide any submissions additional to the initial objection before the Director, the objection remains valid for the review process.
- 42 The grounds of objection are:
- (a) there are already sufficient liquor outlets in the area including a First Choice destination liquor store in close proximity;
  - (b) the majority of consumers in the locality are quite happy with the existing established store in the locality, and, as a consequence, little weight should be given to the applicant's evidence relating to consumer support for the granting of the application; and
  - (c) the grant of the application is likely to increase criminal activity as thieves are likely to be attracted to the store.
- 43 In general terms the objector is of the view that there are sufficient packaged liquor outlets in the locality and that there is no justification for the grant of the application.

### **Determination**

- 44 Section 25(2c) of the Act provides that when considering a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- 45 On a review under section 25 of the Act, the Commission may -
- (a) affirm, vary or quash the decision subject to the review; and
  - (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; and
  - (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.
- 46 In conducting a review under section 25, the Commission is not constrained by a finding of error on the part of the Director, but is to undertake a full review of the material before the Director and make its own decision on the basis of those materials (refer *Hancock v Executive Director of Public Health* [2008] WASC 224).

- 47 The applicant is seeking to establish a new BWS liquor store immediately adjacent to the Woolworth's supermarket in the Centre.
- 48 The applicant must demonstrate the grant of the liquor store licence for the proposed store is in the public interest.
- 49 In determining whether the applicant has discharged that onus, the Commission must have regard to, and must exercise its judgement in accordance with, the objects and provisions of the Act.
- 50 The objects and provisions of the Act that are of most relevance to this application are the primary objects set out in sections 5(1)(b) and 5(1)(c), the secondary object set out in section 5(2)(a), and section 38 of the Act.

**Section 5(1)(c) - To cater for the requirements of consumers**

- 51 The applicant contends that the "aim of the application is to meet the genuine requirements of the consumers (be they residents, visitors or tourists)" and that "in modern times, there is a public expectation amongst consumers.....that they can purchase all of their household shopping requirements as part of one shopping trip".
- 52 If the Commission does not approve the application, the applicant contends it would result "in the Centre's customers, who have a need for packaged liquor, travelling a return distance of over 400 metres from the proposed location of the new store to the nearest liquor store; namely the First Choice Falcon".
- 53 It is also contended that "it is the avoidance of this inconvenience that represents one of the public interest aspects of this application" and that "the proposed BWS store will meet the "one-stop" shopping requirements of customers to the supermarket and the Centre".
- 54 Further, the proposed BWS store will, according to the applicant, deliver convenience, choice, range and value for shoppers and respond to valid town planning requirements by improving access to consumer goods and retail services in Falcon (as the population grows).
- 55 The Centre of which Woolworths is the anchor tenant and which includes a range of other tenancies is, as the applicant points out, "surrounded by other retail and commercial use premises.... making this a destination location for shoppers".
- 56 Most, if not all, of these other retail and commercial use premises (outside of the Centre) have their own car parks or car bays and are some walking distance from the Woolworths store, not unlike the First Choice liquor store.

- 57 While the First Choice liquor store is across a road from the Centre car park, the road is a minor road and the First Choice Store is easily accessible by car from either the Centre car park or the car park/car bays outside the other retail and commercial businesses outside the Centre.
- 58 On the applicant's evidence, the First Choice store is about 200 metres from the Woolworths supermarket and there is some evidence from the objector that some people actually walk from the Centre car park to the First Choice store with their shopping trolley. This would seem to the Commission to be the exception rather than rule.
- 59 The walk from the Centre to the First Choice store is a relatively short distance and, unless liquor is being purchased in bulk, would seem to the Commission to be a casual walk from the Centre car park between the Centre and the First Choice store.
- 60 The applicant's research reveals that the key drivers for BWS stores are, among other factors:
- (a) 30% price/promotion;
  - (b) 23% convenience; and
  - (c) 18% range/products.
- 61 It is well recognised that First Choice is competitive on price and by virtue of the size of the store alone has a far more extensive product range than BWS stores (except for the exclusive BWS products which apparently amount to 15% of the product lines of that store, although the percentage of sales those products represent is unknown).
- 62 It is also apparent from the applicant's research that the majority of the clientele of BWS stores (that are associated with a supermarket) are supermarket shoppers. On this basis, the applicant contends that, as there are no other licensed premises in the locality that meet the reasonable requirements and expectations of shoppers to this supermarket, a "substantial inconvenience" will exist if the application is not approved.
- 63 Although there is a range of other retail outlets in the Centre, there is no evidence that if the application were granted the entire daily and weekly shopping requirements of shoppers would be met as may be the case, for example, in other large metropolitan or regional shopping complexes.
- 64 The Community Survey of residents of Falcon was arranged by the applicant "to gauge their interest in the proposal" and the applicant concludes in the PIA that the results "clearly indicate the public finds "one-stop" shopping very

convenient, yet they do not have the facilities in Falcon that can meet that expectation”.

- 65 Of the 401 respondents, 36% lived in Falcon, 61% lived outside Falcon and 2% were visitors; a high percentage were purchasers of liquor.
- 66 Given the application is for a liquor store in Falcon, and Falcon is most likely to experience the greatest impact from the proposal, it is not known why such a low percentage of Falcon residents were surveyed. Similarly, given the emphasis on tourists in the application, it is not known why such a low proportion of respondents were tourists/visitors.
- 67 In brief, of the Community Survey respondents:
- (a) 82% purchased their general bulk household requirements at Woolworths in the Centre;
  - (b) 35% like to purchase their liquor as part of their household shop (i.e. at the same time);
  - (c) 20% like to purchase their liquor as part of their household shop some of the time;
  - (d) 45% like never to purchase their liquor as part of their household shop;
  - (e) 58% think the proposed BWS store is a good idea, with 70% (or 162 respondents) stating convenience as the predominant reason;
  - (f) 41% think the proposed BWS store is a bad idea, with 82% (134 respondents) stating the main reason was there were enough liquor stores in the area already.
  - (g) 77% have visited and consider the First Choice outlet to be their main store;
  - (h) 33% prefer their liquor store located in a shopping centre or supermarket; and
  - (i) 50% prefer a standalone (40%) or drive through (10%) liquor store.
- 68 A high percentage of respondents were satisfied overall with various aspects such as parking (69%), product range (92%), service (91%) and prices (84%) of their current main liquor store, which for the majority of respondents was the First Choice store.
- 69 It is notable, given the emphasis in the application on customers' expectations about buying groceries at the same time as liquor, that of the respondents who

consider the proposed store a good idea, only 2% (or 4 respondents) “expect the Centre at Falcon to include a liquor store”.

- 70 It appears from the survey that the support for the proposed store, to the extent there is support given 41% consider the proposal to be a bad idea, is driven by the level of convenience afforded by the opportunity to buy packaged liquor and groceries at the same time.
- 71 There is little doubt that for some Woolworths customers, the proposed liquor store would offer some additional level of convenience when those customers are buying some of their liquor requirements.
- 72 The extent of this level of convenience and the reasons the applicant considers it lends support to, even underpins, the application are apparent from a number of its submissions:
- (a) in 2015 it is unreasonable to expect a shopper to get into and out of a car twice due to a requirement to attend two separate and distinct locations to meet their daily and weekly household shopping requirements, variously referred to by the applicant as “one-stop” shopping, thereby resulting in a considerable saving of time and effort;
  - (b) residents of Falcon are currently not purchasing all of their household requirements under one roof, but are forced to drive to separate locations to meet their basic shopping requirements;
  - (c) the modern consumer is time poor, and, therefore, selects retailers that offer them accessibility, value and, importantly, convenience – changing patterns of work, leisure and shopping means that time has become an extremely valuable commodity and it is now a major factor for consumers in the choice of products, services and retailers;
  - (d) if the application is not approved, shoppers are:
    - (i) not likely to walk a 400m return trip to the First Choice store from the Woolworths supermarket as they will want to avoid the inconvenience of carrying bulky items from the First Choice store through a busy car park on their return trip (in fact, if a customer parks between the Centre and First Choice store, the walk is a far shorter distance); and
    - (ii) would prefer not to make a round trip on foot with their purchases or even suffer the inconvenience of a special trip on foot or by car having dropped off their purchases at an already parked vehicle.
- 73 The suggestion that customers are so time poor they will not walk or drive 200 metres to a retail outlet, in this case a large format liquor store, seems to the Commission to be at odds with the apparent trend of liquor customers

becoming more discerning in their buying of liquor and actually devoting more, not less, time to browsing for their liquor products in large format stores.

- 74 In relation to convenience, the Commission commented in the decision *Liquorland (Australia) Pty Ltd v Commissioner of Police & Others LC 18/2015* (“the South Bunbury decision”):

“Convenience is just one factor to be considered when considering the requirement of consumers of liquor – under the Act it must be considered having regard to the proper development of the liquor industry, the other objects of the Act and, of course, the public interest.

It is accepted in the community, as evidenced by the many and varied shopping centres and precincts, that there may be some level of inconvenience experienced in purchasing liquor.

Liquor is a product that may have negative consequences in the community and is subject to extensive regulation as to its sale, supply and consumption. These controls and restrictions exist for the benefit of the community and whilst some members of the community may express a desire for more convenience, the Commission is entrusted with the responsibility of making a determination on whether the public interest is served by any proposal to widen or extend the level of convenience currently enjoyed by the public by the extension or granting of certain licences.

Many shopping centres and precincts, for example, have independent liquor stores quite removed from the local supermarket, and for that matter, removed from the bakery, post office, bank, butcher or other retail outlets or public utilities regularly frequented as part of a person’s or family’s weekly or regular shopping expedition. Some liquor stores are even located in relatively isolated areas separate from a shopping centre or precinct.

A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission’s view, in accordance with the provisions and the intent of the Act”.

- 75 The applicant acknowledges the comments of the Commission in the South Bunbury decision and submits:

“convenience cannot trump all else...- where the Commission has before it strong evidence (as there was in that case) that the application would likely result in unacceptable levels of alcohol related harm, the applicant will need to show very considerable benefits to justify approval – convenience on its own may not be sufficient”

albeit following with the statement that this is not the case in this application where there is an absence of evidence that approval will result in unacceptable harm and ill-health outcomes. Therefore, it is submitted that convenience may well be a sufficient factor for the licence to be granted.

- 76 Factors other than convenience that the applicant also considers relevant include: choice, familiarity, safety, access, price, service levels, product, layout, range, access to certain product lines, brand loyalty and competition.
- 77 Most, if not all, of these factors appear not to feature in the expectations and preferences of those people surveyed, or at least to the extent the respondents consider their expectations and requirements are not being met. Certainly, the applicant has not demonstrated that anything other than convenience, and perhaps, increased competition, is a basis for the approval of the application.
- 78 The applicant also submits that the Centre will have a subregional significance as the population of the locality continues to grow, as people will shop in Falcon in the future rather than at other locations (such as Mandurah) and will expect the Centre to cater for all their household shopping requirements.
- 79 The applicant submits the comments of the Court of Appeal in “the *Bicton decision*” are relevant in this respect:
- “in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and this social fact is reflected in the development of district and regional shopping centres”.
- 80 The extent to which the new shopping centre will evolve into a regional centre is speculation and, in any event, if it does become more popular there is no evidence to suggest that the First Choice liquor store adjacent to the Centre will not continue to meet the expectations and requirements of consumers shopping for liquor in that location.
- 81 Regional shopping centres take all forms, shapes and configurations and the Court of Appeal in the *Bicton decision* was not suggesting that customers expect to be able to shop for all their requirements under the one roof using the same trolley, as the applicant seems to be suggesting.
- 82 Indeed, the Dan Murphy’s liquor store the subject of the *Bicton decision*, is a separate standalone building, much the same as the First Choice store in Falcon, separated from a selection of retail outlets, including a large Coles supermarket, in a shopping centre some distance away across a car park.
- 83 In the Commission’s view, the facility of shopping for all the family’s daily or weekly shopping requirements under the one roof using the same trolley is not expected by members of the community - see paragraph [74] above. In this application it is also relevant that 41% of the Community Survey respondents consider the proposed liquor store to be a bad idea, 45% of those who consider it a good idea never like to shop for liquor as part of their household shop, and only 2% expect the Centre to include a liquor store.

- 84 The applicant has pointed to the fact Falcon is a tourist destination as further justification for the proposed liquor store. It may well be the case that tourists are more likely to purchase packaged liquor than residents, as claimed by the applicant, but there is no evidence to suggest the expectations and preferences of tourists or visitors to Falcon are not being met.
- 85 Certainly, the survey is not informative in this respect as only 2% of the respondents were visitors.
- 86 It is also not apparent from the evidence what type of tourists frequent Falcon and whether they are “time poor” and would find a relatively short walk or drive of 200 metres to a large format store inconvenient, let alone unacceptable.
- 87 The applicant has submitted that section 5(2)(a) of the Act is largely irrelevant to this application.
- 88 While the Commission does not agree the secondary object is irrelevant, the Commission does agree that the proposal adds little in the way of diversity to the products and services available to consumers.
- 89 Apart from the relative small range of BWS specific liquor products, the proposed store would, if approved, provide the same or similar products to the existing First Choice store. In fact, as indicated above, on the basis of the BWS store size alone, the range of products in the proposed store would not be as extensive.
- 90 For the reasons above, the Commission concludes that the potential benefit to the public through the added convenience of one-stop shopping is greatly diminished by the close proximity of the existing packaged liquor outlet.

#### **Sections 5(1)(b) and 38(4)(a) – Minimising harm and ill-health**

- 91 The primary object of minimising harm and ill-health to people or any group of people does not contemplate preventing harm altogether.
- 92 The Supreme Court has provided the Commission with guidance on the approach to adopt in weighing and balancing the potential for alcohol related harm and ill-health should the application be granted against other public interest factors such as the benefits likely to be derived by consumers and the community generally. As indicated earlier in these reasons, this process is:
- (a) first, make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
  - (b) second, make findings about the likely degree of harm that will result from the grant of the application;

- (c) third, having made those findings, assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- (d) fourth, weigh that assessment of the likely degree of harm, together with any other relevant factors, to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the licence.

### **Existing level of harm and ill-health**

- 93 In response to a request from the Director, the Police and EDPH provided health and crime data relevant to the application.
- 94 The applicant submits that there is doubt as to the power of the Police and the EDPH to lodge the data provided. The Commission does not accept this proposition. In making the determination, the Commission is, as the Director was before it, empowered to:
- (a) obtain information as to any question that arises for decision in such manner as it thinks fit – section 16(1)(b)(i); and
  - (b) receive submissions and representations in relation to any application before it, as it thinks fit – section 16(1)(d).
- 95 The Commission also does not agree with the contention of the applicant that the absence of objections and interventions from the Police and EDPH and front line service providers gives rise to an inference that the current level of alcohol related harm and ill-health is no greater in this locality than in the general community.
- 96 As the Commission has commented in previous applications, there may be a number of reasons why agencies, persons and organisations do not lodge formal objections or do not intervene in an application. In any event, as was properly acknowledged by the applicant, the information provided by the Police and the EDPH is relevant and must be considered and taken into account by the Commission in making its decision on the application.
- 97 The Police have provided details of the actual number of offences for Falcon for 2014 and 2015, as well as the number of non-domestic and domestic assaults for Falcon, Mandurah and the Region for 2013, 2014, and 2015 (together with the rate of non-domestic and domestic assaults per 1000 persons as a comparison).
- 98 Whilst the number of offences for theft and property damage appear relatively high, the proportion of alcohol related offences of this type of offence are low – for example, of the 126 and 56 offences for theft and property damage

- respectively, none were recorded as alcohol related for theft and 10 were recorded as alcohol related for property damage.
- 99 The number of non-domestic assaults, both alcohol related and non-alcohol related, also appears relatively low – for example, there were 20 offences in 2015, 9 of which were alcohol related.
- 100 Relative to the sub-district of Mandurah and the Region the rates of alcohol related non-domestic assaults per 1000 persons for 2015 was higher for Falcon, but this may be a product of the small number of offences.
- 101 The number and rates of domestic assaults, however, are more concerning – the actual number of domestic assaults and the proportion of alcohol related domestic assaults has increased year on year from 2013 to 2015 (as have the corresponding rates per 1000 head of population).
- 102 In 2014, there were 21 alcohol-related domestic assault offences (out of a total of 42 offences) and in 2015, 32 alcohol-related domestic assault offences (out of a total of 71 offences).
- 103 The 50% increase in the alcohol related domestic assault offences from 21 to 32 corresponds with a reduction over the same period for Mandurah (255 to 250) and the Region (887 to 871).
- 104 It is highly unlikely therefore, that the increase is attributable to a general uptrend in the community of reporting of domestic assaults; for example because of the public attention and acceptance of domestic violence as a serious community problem and concern that it must be addressed.
- 105 The actual number of offences translates into a rate of 6.8 per 1000 persons for Falcon compared to the rate of 2.8 per 1000 persons for Mandurah and the State. Even allowing for the small population of Falcon (4690) compared to Mandurah (89,608) and the possibility of more significant relative variations, the actual increase in the number of offences and the rate is particularly concerning.
- 106 The applicant submits there are difficulties in accurately making comparisons (by using a rate of the number of offences per 1000 head of population) due to the low population of Falcon, which it is contended, can give rise to highly volatile results and whilst acknowledging the regrettable nature of domestic violence and non-domestic violence, the applicant contends that the number of incidents that are occurring is “not great in number”.
- 107 The applicant also contends the representation by the EDPH of the increase in domestic violence incidents per 1000 per head of population over the past three years is “misleading” as it does not account for the high visitor numbers to Falcon who have the potential to be involved in crime.

- 108 In response to the data relating to drink driving offences (42 offences between 1 January 2013 and 31 December 2015), the applicant contends the number of offences is not of significant concern and cannot be compared to any other area as the incidence of offences is a product of the extent to which the Police target this type of crime.
- 109 Although the level of drink driving offences appears to the Commission to be relatively low, a high percentage (76%) were recorded as having their last drink at a private residence, public place or vehicle, suggesting the consumption of packaged liquor. Moreover, there is no evidence to suggest the Police have, or have not, concentrated their efforts on Falcon or the Region.
- 110 The percentage of treatment episodes recorded by the Mental Health Commission funded alcohol and other drug treatment agencies where alcohol was identified as a primary drug of concern, also appears to be relatively low (24% or 42 of the 172 treatment episodes over the three year period). While the total hospitalisation rate for “all alcohol related conditions” between 2008 and 2012 was significantly lower (0.81) than the State rate, as was the rate of alcohol liver cirrhosis and alcoholism, the hospitalisation rates were higher than the State rate for alcohol related cancers for men (1.59) and suicides (1.31).
- 111 The Commission is not persuaded by the applicant’s submission that the “attributable fraction” used to calculate the notional number of conditions attributable to alcohol is “somebody’s idea of a proportion of how many patients are suffering from a particular condition...that may be caused by alcohol”. The hospitalisation data has been calculated and maintained by health professionals and the data does provide some guidance of the alcohol related conditions being experienced in a particular area.
- 112 The most concerning aspects of the data relating to the existing level of alcohol related harm and ill-health in the community are the level of alcohol related domestic assault offences, which has seen a considerable increase in 2015 over previous years, and the level of alcohol related hospitalisations for cancers for men.

**Likely degree of harm that will result from the grant of the application**

- 113 In relation to the factors that may potentially impact on the existing level of harm and ill-health in the community, the applicant has variously stated:
- (a) there is nothing specific or unusual about the representation of “at risk” groups in the community and there is no additional risk to any “at risk” or vulnerable group;

- (b) although the SEIFA indices confirm that the Falcon community experiences a level of disadvantage there is less risk of alcohol related harm when persons are living in disadvantaged areas compared to more advantaged areas;
- (c) the grant of the licence is highly unlikely to result in any additional rates of crime or ill-health to the public or adversely impact on the amenity of the locality;
- (d) there are no potentially sensitive facilities located near to the proposed BWS store;
- (e) approving the application will not result in a reduction in price of alcohol in this location;
- (f) the proposed store is highly unlikely to change consumer behaviour as to the type or quantity of alcohol to be consumed or introduce “new drinkers” as packaged liquor outlets are already available and the store will “cannibalise” sales from existing stores, including some Woolworth’s stores, thereby resulting in a redistribution of the market share for packaged liquor; and
- (g) as the proposed licence only permits the consumption of alcohol off the licensed premises, amenity issues that occur at licensed venues where consumption occurs on premises are unlikely to arise.

### *Socioeconomic Impact*

114 The applicant acknowledges that Falcon experiences a level of socioeconomic disadvantage, but points out this appears not to have translated into unmanageable levels of alcohol related crime.

115 Further, the applicant highlights a report of the Australian Institute of Health and Welfare dated 2013 on the results of a survey, which showed:

“while people with the lowest socioeconomic status (SES) were more likely to smoke, it was people with the highest SES who were more likely to drink....and consume alcohol in quantities that placed them at risk of an alcohol related disease, illness or injury. People in the lowest SES were twice as likely to abstain and a little less likely to drink alcohol in risky quantities compared with people in the highest SES group”.

116 The EDPH acknowledged the result of the survey, but relies on international research that, it is claimed by the EDPH, supports the contention that people in lower socioeconomic groups tend to have more hazardous and harmful patterns of alcohol consumption (Anderson 2006).

117 The applicant has provided an analysis of the research relied upon by the EDPH and questions the article’s relevance in light of the fact the article makes

no reference to Australia, but references studies in the high income countries such as Switzerland and the UK, and the low income countries such as Nigeria and Brazil – the applicant concludes:

“An article that discusses the interaction between poverty and drug consumption (including alcohol) in low-income countries is clearly an inappropriate source for a study into the interaction between socioeconomic disadvantage and alcohol consumption in the highly localised context of Falcon.”

- 118 The Commission agrees that the article relied upon by the EDPH is perhaps not the best example of research available. However, there is nothing remarkable about the proposition that people who live in areas with poorer socioeconomic conditions tend to have worse health outcomes. Indeed, as the applicant highlights in the PIA, research by the ABS confirms:

“people who live in areas with poorer socioeconomic conditions tend to have worse health than people from other areas. Previous analysis has shown that disadvantaged Australians have higher levels of disease risk factors and lower use of preventative health services than those who experience socioeconomic advantage”.

- 119 Having regard to these factors, although people in lower socioeconomic settings are “a little less likely” to drink alcohol in risky quantities compared to people in a higher socioeconomic setting, the impacts on people in the lower socioeconomic group is no less serious.

### *Unemployment*

- 120 The level of unemployment in Falcon is significantly higher than the State average (7.9%, compared to 4.7% for WA).

- 121 The applicant, however, contends that “Mandurah and Falcon are a mecca for those who are in a lifestyle which relates to the coast and its scenic hinterland rather than earnest work endeavours” which can create higher unemployment or low income levels – it appears to the Commission, there is no cogent evidential basis for making this claim.

- 122 The applicant also contends early retirement and “sea change” choices give rise to higher levels of unemployment. While acknowledging that a higher proportion of older people reside in Falcon than the State average, to suggest this inflated the unemployment rate is speculative.

- 123 The EDPH also submits there is research supporting a link between unemployment and poor health (Walker et al (2000)).

- 124 The study referred to by the EDPH:

- (a) indicated a number of Australian and international studies have established a link between unemployment and poor health; and

- (b) found that low income people reported poorer health than did other Australians and that the health of the low-income subgroups studied (unemployed, the working poor and people relying on government for their income) was significantly poorer than that of the corresponding groups.
- 125 The EDPH contends that disadvantaged communities and people from low socioeconomic groups are likely to have poorer health outcomes due to tobacco use, drinking alcohol in a high-risk manner and other drug use (Spooner et al (2004)).
- 126 The applicant, in referring to the study submitted by the EDPH, contends that causative relationships are yet to be proven, that the study fails to “tease apart” not only the different kinds of substances, but also the places they are consumed (noting different types of liquor licences operate in different ways) and that the “usefulness of the study is limited...in the specific context of Falcon”.
- 127 It is the case that the study is very broad in nature examining the social determinants of drug use (all forms of drug use including alcohol) and structural interventions to address those social determinants. It did not set out to study any issue in depth, but to provide a broad understanding of the complex developmental and social issues associated with the development and exacerbation of drug use problems (recognising and noting that alcohol, tobacco and illicit drugs are major contributors to the burden of disease in Australia and worldwide).
- 128 In respect of social categories, the report notes that health outcomes, drug use and drug outcomes are influenced by social category such that people from low socioeconomic classes have poorer health and are more likely to use tobacco, to drink alcohol in a high risk manner and to use illicit drugs. Drug dependent people, the report states, are particularly likely to be unemployed and to experience marginalisation, both of which can exacerbate their problems and prevent seeking or benefiting from treatment.
- 129 Given the general nature of, and qualifications in, the report, caution does need to be exercised in drawing conclusions specific to particular circumstances. Nevertheless, the report provides some context and insight into the potential impacts of alcohol use and the circumstances associated with its use.
- 130 The other study relied upon the EDPH (Caswell et al (2003), is a New Zealand study which examined the relationship between income, occupational activity and educational achievement and patterns of drinking for a cohort aged between 18 years and 26 years broadly representative of the New Zealand population.
- 131 Among other things, the study found frequency of drinking was influenced by income with the higher income respondents drinking more often persistently

over time while the less well educated drank significantly more during a drinking occasion.

- 132 The study concluded that the dimensions of drinking operate differently which explains the lack of consistency in research into socioeconomic status and volumes of alcohol consumed and that the findings of higher quantities consumed among those of lower socioeconomic status may explain some of the reduced life expectancy found among those with lower economic status.
- 133 Clearly, the study has limited application given the cohort examined, but does add to the research around lower socioeconomic status, reduced life expectancy and consumption of alcohol.
- 134 The applicant has submitted that the fact the study noted “the quantity of drinking was not affected by income” is of note “considering that risky drinking behaviour is most commonly considered to be that which involves large amounts of ingested alcohol over a short period of time.”
- 135 However, this type of drinking is not the only harmful form of drinking as is evident for the well publicised guidelines of the National Health and Medical Research Council (NHMRC).
- 136 The Commission does not accept the applicant’s characterisation of the study as indicating, “if anything...that alcohol is a luxury good whereby consumption is limited to wealth, regardless of frequency or volume of consumption”.
- 137 Having regard to the evidence, the Commission is not persuaded by the applicant not to accept the summation of the EDPH that socioeconomic disadvantage is part of a complex mix of risk factors that increase the potential for alcohol related harm and ill-health and that socioeconomic circumstances (eg unemployment, income and social support) influence behaviours and drinking behaviours which can, in turn, influence socioeconomic circumstances, a scenario that can best be described as a cycle where both factors influence and impact on each other.
- 138 In the context of this application and the demographic composition of the local community, there are a number of people likely to be drinking at risky levels and otherwise experiencing alcohol related harm, as a consequence of which the Commission considers it should exercise caution with respect to increasing the availability of alcohol.

#### *Availability, Density and Harm*

- 139 The applicant contends the relative stable level of alcohol consumption per capita across Australia in recent years, notwithstanding a significant increase in the number of liquor licences, provides strong evidence that Australia is a

mature market and that the increase in density of licensed premises has had little or no effect on the level of alcohol consumption in Australia.

- 140 The applicant further contends there has been a change in drinking culture brought about not by restricting the availability of alcohol, but rather by education, social marketing campaigns and random breath testing.
- 141 According to the applicant, the proposed BWS store is highly unlikely to result in customers consuming more alcohol than they might otherwise consume and that the grant of the application is, therefore, not going to have a perceivable impact on the existing levels of harm or ill-health in the local community.
- 142 The EDPH points out the granting of the application will have the effect of introducing a third packaged liquor outlet within a 210 metre radius into the locality which already experiences health and social impacts related to alcohol.
- 143 According to the EDPH, the three outlets would be the proposed BWS store, the existing First Choice large format store and Cobbler's Tavern adjacent to the First Choice store which currently does not sell, but which under its licence is permitted to sell, packaged liquor.
- 144 The Commission considers the likelihood of Cobbler's Tavern exercising its right to sell package liquor in the future is low.
- 145 Whilst the Commission acknowledges that the level of per capita consumption of alcohol has been relatively stable at a national level over recent years, there may be many reasons for that phenomenon and it is far too premature to be ascribing a change in drinking culture as a reason or contributing factor.
- 146 Outlet density and the extent of the availability of alcohol in the community are, of course, related. The objective of research and studies in this area is, among other things, to endeavour to determine the relationship between the availability of alcohol and the levels of consumption and alcohol related harm and ill-health.
- 147 The applicant refers to research in New South Wales that found an association between the concentration of hotel licences and packaged liquor licences in a local government area and domestic violence and non-domestic violence assaults above certain threshold levels of licence per 1000 head of population (Donnelly et al (2014)).
- 148 The applicant claimed that if the BWS store is introduced as proposed the concentration of the number of liquor stores per 1000 head of population would increase, but would still be below the threshold for concern identified in the research. However, the Commission notes that the new BWS store would still double the number of packaged liquor outlets within the immediate vicinity of the Centre.

- 149 Whilst the BWS store would not be the same size as the existing First Choice store, it is this duplication of outlets within close proximity to a wide range of retail shops in this particular locality that is a relevant consideration in seeking to determine if levels of domestic and non-domestic violence assaults, and other alcohol related harms or ill-health may be affected.
- 150 The EDPH has referred to the peer reviewed research undertaken by M Livingston in 2011 that found a relationship between alcohol outlet densities and rates of domestic violence.
- 151 The applicant refers to a number of extracts from the study and contends that the study is “not a robust piece of research and is flawed in many respects”.
- 152 One extract states: “The main theoretical reasons to expect the density of alcohol outlets in an area to be related to domestic violence derive from the simple availability theory, which, at its most straightforward suggests that alcohol consumption will increase as alcohol becomes more available. Thus, increases in off-premises alcohol outlets in an area may lead to increased overall consumption (through more convenient access, lower prices due to competition or increasingly visible advertising) which in turn will lead to increased heavy drinking occasions and intoxication, thus increasing the risk of domestic violence”.
- 153 The applicant points out that no evidence has been provided, in the study, to substantiate the assumption on the impact of pricing when a new retail outlet opens.
- 154 Another extract states: “Longitudinal findings provide stronger evidence that the relationship between outlets and violence is causal, and not related to other underlying factors not controlled for in a cross-sectional analysis”, and “thus, whilst there are a growing number of cross-sectional studies suggesting that alcohol outlet density is related to domestic violence, there remains a need for an assessment of this relationship over time”.
- 155 The applicant here contends that the author acknowledges that his own research is not robust in nature.
- 156 Additionally, the applicant submits that:
- (a) during the period of the study (1996 to 2005), a number of factors have changed such as the public attitude to, and the reporting of, domestic violence and the number and type of drinking environments in Australia which were not considered;
  - (b) the author had published contradictory research which concluded “the density of hotels (pubs) was positively associated with domestic violence rates”, yet “the density of packaged liquor outlets was not” – as the Director explained in his reasons, the “contradictory” study was an earlier

study in which the author recognised the need for further research and in this respect, it seems to the Commission, that the earlier research has been built upon and overtaken by this later research; and

- (c) the research has no application to Falcon as to find otherwise would be to rely on a very simple view that does not consider the underlying issues with respect to the causes of domestic violence.

157 In relation to the causes of domestic violence, the applicant is responding to the evidence of the EDPH from the Chief Executive Officer of the Women's Council for Domestic and Family Services (WA's peak body for Family Domestic Violence Services) who states:

"Alcohol is clearly a contributing factor in domestic violence – there is definitely a synergy there. In my experience, alcohol can increase the frequency and severity of violence – this is confirmed in research literature.

We also find that alcohol can be used as a justification for violent behaviour or to minimise the violent behaviour of others. In such situations, we suggest clients restrict alcohol consumption as a strategy to reduce violence".

158 The applicant refers to a number of reports which suggest that alcohol of itself cannot be considered as a cause of domestic violence and provides extracts from a Report of a Committee of the Legislative Council in NSW in 2012 titled "Domestic Violence: alcohol and other distractions" which states among other things:

- (a) "Given the specific evidence that domestic violence is inherently gendered, we consider that addressing the causes of violence against women must form the basis of any prevention strategy" (emphasis added by applicant);
- (b) "We call for specific evidence based strategies to address the link between alcohol and domestic violence, predicated on the acknowledgement of a link between the two and a commitment to fund further research on the role that alcohol plays in the frequency, severity and effects of domestic violence."

159 The applicant concludes that the role alcohol plays in domestic violence is "far from clear" and that the emphasis is on addressing the cause of violence (and there is no suggestion at all that alcohol is the cause).

160 The applicant has also suggested that the difference in the rates of alcohol related domestic assaults and alcohol related non domestic assaults suggests there must be a factor other than alcohol at play otherwise "if alcohol was the causative factor the rates would be much more similar".

- 161 However, a range of different factors affect and contribute to the level and incidence of domestic violence, with alcohol being just one of those factors.
- 162 The increase in the existing level of domestic violence in the local community by 50% in 2015 over previous years at the same time as the level in Mandurah and the Region has remained static or decreased slightly is significant and unlikely, in the view of the Commission, to be explained simply by reason of fluctuations due to the small population of Falcon.
- 163 In light of the research into the association between the consumption of alcohol and domestic violence, and the evidence of the Chief Executive Officer of the Women's Council for Domestic and Family Services who has direct experience of the nature and impact of alcohol on the severity and frequency of domestic violence incidents, the Commission considers the level of the risk that the grant of the application would result in an increase in the severity and possibly the level of domestic violence in the local community is moderate (on a scale of low, moderate, high). However, the consequence of that increase in harm is particularly serious for the families concerned and the community.
- 164 In addition, the EDPH contends by reference to a range of different research projects that packaged liquor and the increased availability of packaged liquor is associated with a range of harms and an increase in the rates of various types of offences and behaviours such as: assaultive violence, child maltreatment, vehicle accidents, pedestrian injuries, and injuries among young adults.
- 165 Some of the points made by the applicant in its analysis of the research underpinning the contention of the EDPH include:

*Assaultive Violence (Scribner et al (1995) The risks of assaultive violence and alcohol availability in Los Angeles County. Am J Public Health 85(3)):*

- (a) the suggestion a "correlation may exist" and that "numerous alternative explanations are plausible" suggest the findings are inconclusive regarding the link between liquor outlet density and violence and the findings are correlative not causational; and
- (b) estimates were made of the proportion of assaults that were alcohol related raising doubts about the study's reliability;

*Child Maltreatment (Friesthler et al (2008) An ecological assessment of the population and environment correlates of childhood accident, assault and child abuse injuries. Alcohol Clin Exp Res, 32(11))*

- (a) the study is an ecological study not a detailed empirical assessment and cannot, therefore, be relied upon as a true explanation of the relationship between packaged liquor and child maltreatment;

- (b) the study can only measure correlations between various measures and does not, therefore, equate to causation; and
- (c) the authors of the study themselves suggest the study is far from conclusive and needs more investigation;

*Pedestrian injuries (Lascala et al (2001) Neighbourhood Characteristics of Alcohol-Pedestrian Injury Collisions” A Geostatistical Analysis. Prevention Science, 2(2))*

- (a) the focus of the study is on density of bars not packaged liquor and cites nightclubs as being the highest contributor to alcohol related pedestrian injuries; and
- (b) the authors themselves acknowledge that the study assesses associations not causal mechanisms; and

*Injuries amongst young adults (Gruenewald et al (2010) Ecological associations of alcohol outlets with underage and young adult injuries. Alcohol Clin Exp, 34(3))*

- (a) the findings are correlative rather than causal; and
- (b) there are variables that cannot be accounted for as a result of which “the study cannot be granted great weight”.

166 Notwithstanding the shortcomings cited by the applicant, many studies into alcohol related harm do not establish causal relationships and cannot account for all variables, yet, collectively over time, the studies shed light on associations and correlations that may assist in making predictive judgements about the likelihood or otherwise of alcohol related harm and ill-health in certain circumstances.

#### *Price*

167 The applicant has indicated that the introduction of the proposed store is unlikely to have an impact on the price of alcohol in the locality.

168 According to the Business Manager of Woolworths, the proposed store will offer the standard product range, services and facilities that customers are familiar with at any BWS store, including competitive product prices, with weekly specials and discounts available on bulk purchases.

169 While the applicant describes the new store as offering convenience to its Woolworth’s customers, the new store would be competing for customers and market share with the nearby First Choice store.

170 In this environment, there would be competitive tension around the pricing of liquor products and although the proposed store would operate in line with other BWS stores, both in terms of price and products, there is scope to frame

weekly specials and discounted products according to local customer preference and demand.

- 171 In this respect, some customers may, in fact would almost certainly, be influenced in their purchasing behaviour by price as well as convenience.
- 172 In the Commission's view, the applicant has not demonstrated, and the Commission does not accept, that the introduction of the new store would not result in an increase in the level of consumption of liquor in the community.
- 173 In summary, the Commission considers there is a likelihood the introduction of the BWS store would lead to an increase in consumption of liquor in the community and that there is a corresponding likelihood of an increase in the level of harm and ill-health.
- 174 Although that risk is considered to be moderate, the magnitude of the harm and ill-health that may result is not insignificant, particularly having regard to the concerning level of domestic violence and the consequences of an increase in the severity of the violence and frequency of that violence.

**Assess the likely degree of harm to result from the grant of the application against the existing degree of harm**

- 175 As recorded in paragraphs 101 to 105 above, it is clear from the data that has been provided that there is a significant level of alcohol-related harm and ill-health in the locality, and that specifically, the incidence of alcohol-related domestic assault has substantially increased each year since 2013. The comparison with the same data for Mandurah, the Region and the State in general is stark, indicating a particular problem in the locality of Falcon.
- 176 Together with the fact that there is an existing high level of disadvantaged in the community, the Commission's assessment of the risk is that the likely magnitude of an increase in harm and ill-health if the proposed new store is introduced, is such that there would need to be sound counterbalancing benefits to consumers and the local community to justify the grant of the application.
- 177 The Commission considers the following view taken in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* {2013} WASC51 [57] applies to the circumstances of this application:

*In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase of risk from the baseline level. It may be that where an existing level of risk is greater, a small*

*increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing "at risk" persons who might be further affected.*

**Weigh that assessment of the likely degree of harm, together with any other relevant factors, to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the licence.**

178 In the Commission's view, apart from the additional employment from the introduction of the proposed BWS store, which, as indicated, may eventuate with another tenant should the application not be granted, the main benefit of this proposal is the additional convenience that would be afforded to Woolworth's shoppers and, to a lesser extent, other shoppers in the Centre.

179 The applicant variously contends there are also other benefits associated with the proposal including:

- (a) the BWS store will add to the overall sense of well-being of the Falcon community and in this respect will contribute in a positive way to community amenity – however, in the Commission's view, the amenity of the area is already largely determined and it is difficult to see how the existence or otherwise of the proposed store, given the existence of a modern large format liquor store in very close proximity, will result in this outcome;
- (b) the BWS store does not of itself provide social and recreational opportunities, however it contributes to these activities by selling packaged liquor which might be consumed as part of that entertainment activity – in the Commission's view, consumers already have options to acquire liquor for this purpose;
- (c) the BWS brand is popular and will provide a community benefit by satisfying a need that it forms part of the tenancy mix of the Centre – whilst the Commission recognises the importance of brand loyalty to the applicant, the extent to which the BWS brand will benefit the tenancy mix has not been established, particularly given the majority of the BWS shoppers are supermarket shoppers in any event and, it is not credible in the Commission's view, to suggest that customers will not visit the Woolworths supermarket simply because it does not have a BWS store;
- (d) the BWS store will contribute to the economic well-being of the local community through the employment of a significant number of staff (3 full time staff assisted by 5 casual and part time staff) and the donations it has the potential to make to local community groups and organisations – the Commission agrees that employment is an important benefit yet there is no evidence to suggest another tenant will not occupy the lettable space if the BWS store is not established, and it is not apparent to the Commission why donations to community groups have to be linked to the

sale of alcohol (particularly as the applicant operates a Woolworths supermarket in the locality already); and

- (e) the co-location of the BWS store with other business and the Centre can only benefit the other businesses in the locality as more people will attend this area for their shopping requirements – the Commission notes that of those survey respondents who thought the proposal a good idea, 2% thought it would bring people to the Centre and only 2% expect the Centre at Falcon to include a liquor store.
- 180 The applicant has also contended that the fact 7% and 6% of respondents indicated their main store of patronage was Dan Murphy’s Mandurah and BWS Halls Head, and not the First Choice store in the locality “confirms that residents of Falcon are currently not purchasing all of their household requirements under one roof and they are forced to travel to separate locations to meet their basic shopping requirements”.
- 181 This contention, of course, overlooks the fact 61% of the respondents do not reside in Falcon so that it appears likely that rather than “leakage” away from the area, the First Choice store is actually attracting shoppers to Falcon. As the survey also relates to persons (i.e. respondents) who have purchased liquor in the past 6 months, it is by no means clear whether the consumers surveyed are regular, irregular or even very infrequent.
- 182 In so far as the proper development of the liquor industry is concerned, it is relevant to consider the comments of the Commission in the South Bunbury decision, where, after referring to the comments of Heenan J in *Woolworths Limited v Director of Liquor Licensing* [2012] WASC 384, the Commission stated:
- “Proper development of the liquor industry is not synonymous with the unrestricted expansion of liquor outlets to satisfy a desire on the part of some consumers of liquor or liquor related services for a relatively insignificant or inconsequential modification or improvement to the level of convenience”.
- 183 Having considered all the evidence presented, the Commission does not accept that consumers of liquor in this locality are so time poor that they expect to be able to purchase their liquor requirements with their groceries in one trolley under the one roof or that they would determine not to shop at the Centre because that convenience is not available to them.
- 184 Nor is the Commission satisfied that the type of products and level of services proposed by the BWS store are noticeably different to those already available a short distance away, or that the applicant has demonstrated there are sufficient benefits to consumers and the local community to outweigh the risk of harm that may result from the grant of the application.

- 185 In considering all of the material before it, on the balance of probabilities, the Commission is of the view that, due to the existing level of alcohol-related harm and ill-health and the potential for an increase in that harm and ill-health, and the very minor benefits to be derived by the local community from the introduction of an additional liquor store in the proposed location, it is not in the public interest to grant the application
- 186 Accordingly, the application is refused and the decision of the Director confirmed.

A handwritten signature in black ink, appearing to read 'Eddie Watling', written in a cursive style.

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**EDDIE WATLING**  
**DEPUTY CHAIRPERSON**