

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Baytown Holdings Pty Ltd
(represented by Ms Jessica Patterson of Lavan Legal)

Intervener: Director of Liquor Licensing

Commissioner of Police
(both represented by Ms Caroline Chapman of State Solicitor's Office)

Objectors: Oakline Pty Ltd
VB Enterprises Pty Ltd
Tyra Wainwright
Warren Hancock

Commission: Ms Belinda Lonsdale (Presiding Chair)
Mr Evan Shackleton (Member)
Dr Eric Isaachsen (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 an application for the conditional grant of a liquor store licence for premises to be known as Cape Cellars Drive-Thru.

Premises: Cape Cellars Drive-Thru, 231 Bussell Highway, West Busselton

Date of Hearing: 24 September 2015

Date of Determination: 1 March 2016

Determination:

The decision of the delegate Director of Liquor Licensing is quashed and the application for the conditional grant of a liquor store licence for premises at 231 Bussell Highway, West Busselton is approved.

Authorities referred to in the determination:

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *Springbok Foods Pty Ltd v Commissioner of Police* LC26/2014
- *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* LC 18/2012
- *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207
- *Liquorland (Australia) Pty Ltd v Commissioner of Police and Director of Liquor Licensing* LC18/2015

Introduction

- 1 This is an application by Baytown Holdings Pty Ltd ("the applicant") to review a decision of the delegate Director of Liquor Licensing ("the Director") pursuant to section 25 of the *Liquor Control Act 1988* ("the Act") to refuse an application for the conditional grant of a liquor store licence for premises to be known as Cape Cellars Drive-Thru to be situated at 231 Bussell Highway, West Busselton ("the proposed premises").
- 2 In a decision dated 9 June 2015, The Director refused the application, which had been filed on 13 August 2014.

The history of the matter

- 3 The premises the subject of this application was previously licensed for many years under liquor store licence number 6030048116 held by the company Redport Enterprises Pty Ltd, being a company related to the applicant company by virtue of the fact that both companies have Mr Robert Zahtila as the sole Director.
- 4 In May 2012, a conditional removal of that licence was granted and was to be transferred to new premises located 680m away at 170 - 172 Bussell Highway ("the new premises"). In April 2015, the removal of that licence was made unconditional. At the time of making that application, the applicant had submitted that the removal of the licence to the new premises would "be able to satisfy a wide array of consumer needs for years to come" and "allow for a superior operation capable of catering for the requirements of consumers both now and into the future."
- 5 The applicant had further submitted that:
 - 1) the new location was more suitable than the existing location;
 - 2) the new location provided a safer and more convenient access off Bussell Highway,
 - 3) the new location provided more parking and more convenient access for people located south of Bussell Highway;
 - 4) the new premises would not be located in the vicinity of existing residences or anything else incompatible with a liquor store;
 - 5) its existing customers required the premises to evolve, expand and improve; and
 - 6) the new premises would provide much improved services to tourists and would be safer and much more appropriate.
- 6 The present application seeks in effect to revive the old site as a new Cape Cellars store

but with a drive-through facility big enough to cater for motorists driving campervans or with caravans, trailers or boats in tow.

The application before the delegate Director of Liquor Licensing

- 7 The features of the proposed premises are set out in the decision of the Director.
- 8 It is sufficient to say that there is no dispute between the parties concerning the quality of the proposed facility or the appropriateness of the applicant to hold a licence.

The applicant's submissions before the Director and the Commission

- 9 Before the Director, the applicant submitted that the proposed premises would be very different to the facility that had existed at the relevant site previously.
- 10 The applicant relied principally upon an argument that recent growth in the locality and the Busselton region generally, had resulted in a need for both packaged liquor sales *and* drive through facilities in West Busselton.
- 11 The applicant submitted a Public Interest Assessment ("PIA") emphasising that, since the conditional removal of the licence in 2012, Busselton had seen "extraordinary growth and development," resulting in a need for the type of liquor store now proposed.
- 12 The applicant submitted that one of the main consumer requirements was convenience. It sought to emphasise the requirements of "drive-by shoppers, people travelling past with caravans, trailers and boats and residents living close by."
- 13 The applicant submitted a business model that focused on having "an extensive range, outstanding customer service and competitive pricing," with the applicant proposing to jointly market its products with the existing Cape Cellars store. It was submitted that having two retail liquor outlets would enable it to have better buying power, which would "benefit consumers in terms of price, range, stock and supply".
- 14 The applicant produced evidence of a survey, some questionnaires and letters of support from business and tourism operators, residents and politicians including Troy Buswell MLA, the then Member for Vasse.
- 15 The applicant submitted that caravan owners were a significant and well-known feature of the local tourism industry and a target market for the proposed premises.
- 16 The applicant also submitted that the West Busselton area was lacking a drive-through packaged liquor store. Although it acknowledged that another packaged liquor store licence would add to outlet density in the broader Busselton area, it submitted that there was a consumer need for it, given that Busselton was a major tourist centre and rapidly

growing and developing.

- 17 Further, the applicant submitted that the proposed premises would provide a different type of service, in a different location, away from where the other licenses were concentrated.

Submissions of the objectors

- 18 Notices of objection were filed by two licensees in the Busselton area, namely Oakline Pty Ltd and VB Enterprises Pty Ltd, being the licensees of Albie's Bar and Bistro and Vasse Café Bar.
- 19 The licensee objections were made essentially on the basis that there was already a proliferation of package liquor outlets in the Busselton area.
- 20 An intervention was also lodged by the Commissioner of Police ("the Police") who submitted that, due to existing levels of alcohol-related harm in Busselton and the already high level of outlet density, the application had failed to establish that the proposed premises would further the objects of the Act.
- 21 The Police made representations that the grant of the application would result in harm and/or disturbance, if conditions were not imposed on the licence.
- 22 Objections were also lodged by nearby residents Tyra Wainwright and Warren Hancock whose main objection was that the granting of a licence would result in an increase in traffic in the vicinity of their residences.

The decision of the delegate Director of Liquor Licensing

- 23 The Director was not persuaded that the applicant had established that the grant of a licence at the proposed premises would address a need for packaged liquor services in the West Busselton area.
- 24 At paragraph 53 of his decision, the Director found that:

"I have formed this view because[another] Cape Cellars is located only 680 metres away from the proposed site at Bussell Highway. This distance equates to approximately a two-minute drive or 10 minute walk, a distance that I consider to be negligible under the circumstances, particularly given that much of the applicant's evidence revolves around people driving on Bussell Highway. I have also noted that the licensee objectors have identified a significant number of other relevant licensed premises in the Busselton and West Busselton areas that are capable of selling packaged liquor to the general public."

- 25 The Director noted that there were two other licensed premises within the locality providing for drive-through liquor services, namely Albie's Bar and Bistro and the Esplanade Hotel, located 2.9 and 3.7 km respectively from the proposed premises.
- 26 The Director found, based on the consumer evidence presented that the provision of a drive-through service at the proposed location would cater to the requirements of some consumers. However, the Director found that the applicant's assertion that the grant of the licence would cater to tourists and those towing caravans was not supported by the consumer evidence, given that 91% of the respondents to the survey were residents of the Busselton region, as were the majority of the respondents who participated in the public questionnaire.
- 27 The Director found that the grant of a licence for the proposed premises would result in annoyance, disturbance or inconvenience to nearby residents in terms of increased traffic congestion and traffic flow, particularly given the proposed trading hours.
- 28 The Director found that granting the licence would result in only minimal additional benefits of convenience given that most consumers indicated that they would continue to use the existing Cape Cellars. In weighing the issue of consumer convenience against the broader public interest, the Director accepted the Police submissions that the rate of alcohol consumption in Busselton is higher than the Western Australian average and that this is reflected in a high number of alcohol related assaults.

Legal Principles on Rehearing

- 29 On an application for review under section 25 of the Act the Commission is not required to find that the Director has committed an error. Section 25(2c) of the Act requires that the Commission undertake a full review of the materials before the delegate and make its own determination on the basis of those materials: *Hancock v Executive Director of Public Health* [2008] WASC 224.
- 30 The applicant seeks a review of the Director's decision on three grounds:
- 1) that the grant of the licence is in the public interest;
 - 2) the material before the Director neither support nor justifies the refusal of the application; and
 - 3) the application was not determined in accordance with the substantial merits of the case.
- 31 In our view, the applicant's grounds for review really amount to the one ground, that is, that on the materials before the Director and, therefore, now before the Commission, the granting of the application is justified in the public interest.

The public interest

- 32 Section 38(2) of the Act requires the applicant to establish that the granting of the application is in the public interest.
- 33 The public interest requires the Commission to exercise a discretionary value judgment by reference to the scope and purposes of the Act: *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227.
- 34 In determining whether the public interest test is satisfied, the Commission must have regard to the primary and secondary object of the Act, as set out in section 5.
- 35 Section 5(1) of the Act provides that the primary objects of the Act are to:
- a) *regulate the sale, supply and consumption of liquor; and*
 - b) *minimise harm or ill – health caused to people, or any group of people, due to the use of liquor; and*
 - c) *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.*
- 36 Section 5 (2) of the Act sets out the secondary objects of the Act, as follows:
- a) *to facilitate the use and development of licensed facilities, including the use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the state;*
 - b) *provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
 - c) *provide a flexible system with as little formality or technicality as may be practicable, for the administration of the Act.*
- 37 The present application does not turn on any considerations of the secondary objects of the Act.
- 38 In considering the public interest, the Commission is also entitled to take into account matters set out in section 38 (4) of the Act, namely:
- a) *the harm and ill health that might be caused to or any group of people, due to the use of liquor;*
 - b) *the impact on the amenity of the locality in which the licensed premises, or*

proposed licensed premises are to be situated;

- c) *whether offence, annoyance, disturbance or inconvenience might be caused to people who reside work in the vicinity of the licensed premises or proposed licence premises; and*
- d) *any other prescribed matter.*

Summary of facts in relation to the application

39 As part of its original application the applicant's PIA highlighted the following facts:

- 1) The population forecast for Busselton in February 2012 which projected a population increase by more than 58% by 2026 from 32,000 to 55,300 persons.
- 2) That Busselton is a well-known tourist destination catering for over half a million tourists between 2010 and 2012.
- 3) The significant number of events expected to attract tourists to the area which have been scheduled.
- 4) Evidence of a high demand for facilities for caravan tourists.
- 5) Results from a questionnaire distributed to 19 people supporting the application on the basis of improved convenience.
- 6) Letters from 16 people living and working in the area, including people from local businesses and tourism bodies supporting the need for a drive through facility in West Busselton.
- 7) The fact that existing licenses are all situated either in or close to the Busselton town centre whereas there are none located in West Busselton.
- 8) The fact that there are approximately 16 tourist accommodation facilities to the West of the proposed premises, including for example, the Amblin Caravan and Camping Park and the Busselton Villas and Caravan Park.
- 9) The fact that the nearest drive through facility to residents or tourists visiting West Busselton is the Ship Inn (which has approval to convert its current facility to a Dan Murphy's store, thereby removing the drive-through facility.)

Would the proposed premises “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?

40 At the hearing of the application for review, counsel for the applicant emphasized that there were three key points to the applicant’s submissions:

- 1) firstly, that there were “special circumstances” relating to the location of the proposed premises, on the basis of its location in West Busselton;
 - 2) secondly that the proposed liquor store had many points of distinction with existing liquor stores which would cater to unmet consumer needs; and
- thirdly that there was substantial evidence to support consumer need for the proposed facility.

The features of the proposed premises

41 The proposed premises is said to meet the requirements of consumers within the meaning of section 5(c) described in the PIA document at page 31 as:

"the proposed liquor store will be ideally situated to serve the local and passing traffic travelling along the busy artery linking East and West, on the direct path through the region. Bussell Highway is a main artery through the area. It feeds “enormous” volumes of traffic for a very long distance travelling right past the applicant's site....People travelling along the highway will be attracted to the possibility of stopping at the applicant's premises because of its high quality, simple and easy access and inviting physical appearance which will have unique character and style as an independent retailer promoting the local region.

In particular, drivers towing trailers will be [] “convenienced” (sic) by Cape cellars drive-through as they drive past.”

42 At the hearing, the applicant sought to demonstrate that people travelling from the direction of Perth to West Busselton would generally not wish to travel through Busselton town centre (where most of the packaged liquor outlets are located). Instead, it submits that motorists would choose to travel via the Busselton Bypass, before turning right into Fairway Drive (thus bypassing all of the existing liquor outlets in the Busselton area).

43 It is apparent from material submitted in support of the application that there are approximately 16 tourist accommodation facilities to the West of Fairway Drive, including for example, Aqua Resort, Abbey Resort and Bayview Geographe Resort. The applicant makes the point (which was not disputed) that most of these facilities are self-catered and self-contained which provide little in the way of room service or food and beverage

services.

- 44 The applicant submits that, in considering the question of “consumer requirements” under section 5 (c) of the Act, the Commission should have regard to Busselton’s predicted population growth, its increasing popularity as a tourist destination and the lack of similar premises on the location of West Busselton.
- 45 Counsel for the applicant submitted that, since the 2012 removal application was determined, Busselton has undergone considerable growth and development. The applicant notes that in January 2012, the Shire of Busselton was elevated to "city" status and became known as the City of Busselton. The applicant referred to the prediction by the Western Australia planning Commission that Busselton indicated a population increase by more than 58% by 2026 to 53,300 persons from its then current population of around 32,000 people.
- 46 The applicant further submits that in addition to the facility servicing the West Busselton area, the proposed drive-through facility will cater to the presently unmet needs of a particular type of consumer, namely those driving large caravans, boats and trailers. This submission is supported by a letter the Chief Executive Officer of the Geographe Bay Tourism Association said in a letter dated 19 June 2014:

“... Through our contact with more than 300,000 visitors to the Busselton and Dunsborough Visitor Centres each year we have observed increasing demand for local wine and beer. Recent research commissioned by Tourism W.A. confirmed that food and wine experiences will continue to be strong drivers of visitation to this region. Cape Cellars have an unrivalled reputation as providing an extensive range of local wine and beer, and friendly, expert advice to customers regarding regional selections. The proposed new drive through facility at 231 Bussell Highway, West Busselton will be more conveniently located for many visitors, with the vast majority of the Cities 13,000 bed nights... situated in close proximity. It will also provide easier access for visitors with caravans and trailers, as there are no other liquor stores with drive-through facilities in the area. I do not believe there will be any problems associated with the new liquor store operating at the same address where Cape Cellars has operated...”

The submissions of the Commissioner of Police and licensee objectors

- 47 As the Police point out, the fact is that there is already an outlet selling packaged liquor a mere 680 meters down the road towards Busselton, means that the consumer requirement for packaged liquor is already being met. The Commission accepts the Police submission that the only additional benefit for the public would be a potential increase in convenience in accessing liquor by virtue of the drive-through facility.
- 48 It is for the applicant to demonstrate that there sufficiently probative evidence to

demonstrate that the needs of consumers are not being met: *Springbok Foods Pty Ltd v Commissioner of Police* LC26/2014 [75].

49 As pointed out by the two licensee objectors, the Busselton area is already being serviced by 10 packaged liquor outlets, including:

- 1) Busselton Liquor Store at 47 Albert Street, Busselton;
- 2) BWS at 65 Kent Street, Busselton;
- 3) BWS Busselton at 3 Caves Road, Busselton;
- 4) BWS Busselton North, at the corner of Armitage drive and Marine Terrace, Busselton;
- 5) Cape Cellars at shop 1, lot 56, 170 – 172 Bussell Highway, Busselton;
- 6) Esplanade hotel, Marine Terrace, Busselton;
- 7) Vasse Café Bar at 73 Duchess Road, Busselton;
- 8) The Ship Inn, 6 Albert Street, Busselton;
- 9) Progressive Supa IGA at 30 Kent Street, Busselton; and
- 10) Albie's Bar and bistro, Queen Street, Busselton.

50 The licensee objectors assert that the public already has sufficient access to packaged liquor and packaged liquor services and that the proposed premises will significantly increase the community's exposure to liquor and the availability of liquor with potentially negative health and harm consequences. The licensee objectors submitted that the proposed premises would encourage impulse purchases by virtue of its location on the highway, would drive down prices to create a market conducive to harm or ill-health and referred to existing levels of alcohol-related harm.

51 The applicant submits that, although there are a number of liquor outlets in the general Busselton area, there is no drive-through liquor store specifically serving the West Busselton area. It is submitted that for residents of West Busselton, or those passing through Busselton it is inconvenient to "backtrack" into Busselton and be subjected to heavy traffic as well as several sets of traffic lights.

Findings on whether there is a consumer requirement

52 The Commission notes that it is apparent that consumers intending to access the West

Busselton area via the most direct route i.e. via the Bypass and Fairway Drive, would not pass the existing Cape Cellars premises. The Commission is of the view that tourists in particular may not be able to readily locate the existing facility, unless they were to double back towards Busselton. Given that Bussell Highway is a busy road, particularly during the tourist season, the Commission acknowledges the desirability of having a facility to cater for the needs of tourists and residents of the West Bussleton area keen to avoid the increased congestion and traffic lights along Bussell Highway towards Busselton city.

- 53 In the Commission's view, the applicant has demonstrated that there is a consumer requirement for the sale of packaged liquor in the West Busselton area, particularly to the west of Fairway Drive. We have come to this view partly based on the responses to the consumer surveys supporting the application of a liquor store with a driveway facility in that area.
- 54 What is known, however, is that there are some 16 tourist accommodation facilities to the West of Fairway Road, many of which are effectively self-catering and there is no drive-through liquor store in that area. The nearest drive-through liquor store is 2.9 km away but that is listed for conversion to a Dan Murphy's store and so that drive-through facility will in due course cease to exist. In any event, even if it was to remain, the Commission accepts the submission that it is difficult to access for persons travelling to West Busselton.
- 55 This leaves the nearest drive-through facility located at the Esplanade Hotel (3.9 km away and which would require motorists to travel through several sets of traffic lights.)
- 56 On balance, given the location of the facility and the proposed drive-through, the Commission finds that the applicant has established a consumer requirement for the proposed facility.
- 57 Having reached the conclusion that the applicant has established that there is a consumer requirement for the proposed facility, the Commission must weigh up the other objects of the Act, including whether granting the application would result in an increase in alcohol related harm and ill-health, or result in an increase in annoyance, disturbance or inconvenience to local residents.

Harm or ill-health

- 58 The Police referred to the evidence of existing levels of alcohol related harm and ill health in the locality. It referred to Incident Management System Data ("IMS Data") available to police which details police attendances logged via the Computer Aided Dispatch ("CAD") system, which revealed that there were 114 alcohol-related offences committed in the Busselton sub-district between September 2013 and August 2014,

amounting to one recorded alcohol-related offence every three days.

- 59 In relation to the Busselton area, IMS data establishes that one alcohol-related offence is committed approximately every 12 days.
- 60 The Commission notes that the evidence suggests that alcohol-related harm appears to be significantly less in the West Busselton area than in the Busselton area.
- 61 The Commissioner of Police noted that there were “at risk” groups living in the locality, which is an urban, residential suburb. [See the PIA at 5.3 and 5.8].
- 62 It referred to the fact that the West Busselton Primary School and Busselton Senior High School are located 450 meters and 1km away respectively. The Commission note that this was a factor in existence when a liquor store existed there previously so little weight is given to that fact.
- 63 The Police referred to the fact that there are 7 other liquor outlets within the Busselton area and referred to research that suggested that an increase in liquor outlets is associated with an increase in alcohol-related harm.
- 64 The Police did accept, however, that the nature of a liquor store is that people purchase liquor to consume at home and is therefore considered to be “low risk”.

Findings on the issue of harm or ill health

- 65 The Commission notes that it is not apparent from the statistics referred to by the Police whether the reported alcohol-related offences relate to offences occurring in public or at home.
- 66 As was recognized by the Commissioner in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* LC 18/2012 [70] (“Liquorland”):
- “There is a considerable body of research which demonstrates a correlation between outlet density and harm caused but this needs to be applied with caution to specific locations as much of the data aggregated and general in nature”.*
- 67 Such general evidence relating to harm minimization is nevertheless relevant and admissible: *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207 at [180]
- 68 The Commission is inclined to the position that any increase in harm would be of a fairly minimal nature, given the low risk posed by liquor stores generally and the fact that assaults are lower in West Busselton
- 69 The Commission notes what was said in *Liquorland (Australia) Proprietary Limited v*

“the commission, of course, cannot accurately predict the likely impact on alcohol-related harm and ill-health that may result from the grant of the license, and must evaluate all the evidence before it.”

- 70 The Commission accepts the applicant’s submission, which the Police also support, that a liquor store is “low risk” in terms of increasing alcohol-related harm. Whilst it is likely that there could be increase in harm associated with an increase in liquor stores, the Commission considers that any likely increase in harm would be fairly marginal.

The relevance of existing liquor licenses permitting the sale of packaged liquor to the assertion of consumer requirements and harm or ill health

- 71 There are 7 existing liquor outlets which sell packaged liquor in the Busselton area.
- 72 The Police submit that the only additional benefits to the public are the potential decrease in costs due to increased competition and an increase in consumer convenience in accessing liquor via a drive through.
- 73 However, as the applicant points out, the existing outlets selling packaged liquor are concentrated either within or very close to the Busselton CBD. Although the Ship Inn is approximately 2.6km from the premises, persons intending to bypass Busselton and head straight to West Busselton are required to back track towards Busselton on Bussell Highway and navigate up to 3 sets out lights.
- 74 Further, as the applicant points out, the Ship Inn has recently obtained approval to convert its existing drive through and packaged liquor store to a Dan Murphy’s outlet thus removing the drive-through. This will result in there being one less drive-through facility in the Busselton area. The nearest drive-through facility to the West Busselton area will then be the one at the Esplanade hotel.
- 75 The drive-through at the Esplanade Hotel is not within the Busselton CBD and is difficult for tourists to find and inconvenient for West Busselton to access.
- 76 The Commission is of the view that the fact that there will shortly be one less drive through facility, coupled with the fact that the two existing drive through facilities are not located in the West Busselton area west of Fairway Drive, does support the applicant’s contention that there is an unmet consumer need in that area of West Busselton for, a liquor store with drive-through facilities. Given that the risk of harm or ill-health is relatively low the Commission is of the view that the applicant has satisfied the requirements of subsection 5(1).

Effect on the amenity of the area and likelihood of annoyance, disturbance or inconvenience

- 77 Residents Tyra Wainwright and Warren Hancock objected to the application on the basis of the factors set out in section 38(4) of the Act, primarily that the proposed premises would affect the amenity of the area and cause annoyance, disturbance or inconvenience to existing residents.
- 78 They submitted that the proposed premises would result in extra traffic crossing a footpath to exit on to Bower Road, that footpath being used by pedestrians, school children and families walking to and from school.
- 79 The applicant submits that the impact of the licence on the amenity of the area would be virtually neutral, because the site had operated as a liquor store for many years. Ms Wainwright and Mr Hancock submit that the proposed premises would differ from the facility which existed previously in the following respects:
- 1) the previous liquor store only traded from 9 am until 8:30 pm;
 - 2) the previous liquor store did not attract large vehicles and it trailers; and
 - 3) most vehicles accessed the previous liquor store directly from Bussell Highway, rather than from their road.
- 80 The Commission accepts that there is likely to be an increase in traffic on Bower Road. However, given the projected population increase in the Busselton area generally, the Commission sees an increase in traffic flow on not only Bussell Highway but surrounding streets as inevitable. Given that the appellant's proposed closing hours would be 8.30pm, the Commission is of the view that any impact upon the amenity of the locality and any offence, annoyance, disturbance or inconvenience to residents of the area would be kept to acceptable levels.

Conclusion

- 81 The present application does not turn on any dispute between the applicant and the interveners and objectors as to the secondary objects of the Act. The main issue for determination is whether the applicant has established that there is a public interest in this application being granted. Having concluded that there is a consumer requirement for the type of facility proposed by the applicant in the relevant location, the Commission has then weighed up the matters relevant to the secondary objects of the Act as well as the matters set out in section 38(4) of the Act.
- 82 On balance, the Commission finds that given that a similar facility existed at the location

of the proposed premises previously, any effect on the amenity of the locality or any annoyance or disturbance to residents would be marginal.

- 83 The Commission acknowledges that a proliferation of liquor outlets is generally undesirable and is cognisant of the fact that its determination in this instance involves approval of a licence less than 1km away from an existing liquor store. In this respect, the Commission regards the application as very finely balanced. However, given the applicant's focus on servicing the tourism industry and, in particular, providing a drive through service, the Commission is of the view that, by a narrow margin, the applicant has established that there is a public interest in the additional grant of a licence.
- 84 The decision of the Director of Liquor Licensing is quashed and the application for a conditional grant of a liquor store licence for premises at 231 Bussell Highway, West Busselton is approved.



BELINDA LONSDALE
PRESIDING MEMBER