

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

- Applicant:** Australian Leisure and Hospitality Group Pty Ltd  
*(represented by Mr Marcus Solomon, instructed by Ms Susan Nicholson of Cullen MacLeod Lawyers)*
- First Intervener:** Commissioner of Police  
*(represented by Mr David Leigh and Mr Ed Fearis of State Solicitor's Office)*
- Second Intervener:** Executive Director of Public Health  
*(represented by Mr Brendyn Nelson of State Solicitor's Office)*
- Objectors:** Mr Jeffrey Michael Caddy  
Mr Timothy Matthews  
Mr Laurie E Smith
- Commission:** Mr Seamus Rafferty (Chairperson)  
Mr Edward Watling (Deputy Chairperson)  
Mr Michael Egan (Member)
- Matter:** Application for the alteration and redefinition of licensed premises referred under section 24 of the *Liquor Control Act 1988*
- Premises:** Leisure Inn Rockingham, Lot 2, 1 Chalgrove Avenue, Rockingham
- Date of Hearing:** 20 July 2016
- Date of Determination:** 11 October 2017
- Determination:** The application is granted.

**Authorities referred to in the determination:**

- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASC 227
- *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51

## **Introduction**

- 1 Australian Leisure and Hospitality Group Pty Ltd (“the applicant”) has applied for approval to redevelop and upgrade the Leisure Inn Hotel at Lot 2 Chalgrove Avenue Rockingham, pursuant to section 77(1) of the *Liquor Control Act 1988* (“the Act”)
- 2 On 21 August 2015, the Director of Liquor Licensing referred the matter to the Liquor Commission of Western Australia (“the Commission”) for determination pursuant to section 24 of the Act. A hearing was held to determine the application on 20 July 2016.
- 3 The application has been accompanied by extensive submissions from the applicant, objectors and interveners. It has been necessary, therefore, to set out in some detail the submissions and contentions of the various parties to provide a comprehensive overview of the evidence and the issues that need to be determined.

## **Background**

- 4 A previous application by the applicant in 2011 pursuant to section 77 of the Act to develop a new building to provide retail packaged liquor under the Dan Murphy’s brand at the same location was refused by the Commission as the building was not contiguous to the existing licensed premises as required under the Act.
- 5 The present application relates to an upgrade and redevelopment of the premises as well as the development of a new Dan Murphy’s retail packaged liquor outlet, to replace the existing BWS outlet, which is connected to the premises.

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

- 6 The applicant has lodged a Public Interest Assessment (“the PIA”) in support of the application.
- 7 The applicant acquired the premises in 2007 and has increased the venue’s appeal and customer base since that time. The improvements implemented by the applicant have resulted in the premises becoming a well-run hotel catering to around 5,000 people per week, largely attributable to popular live music and food promotions.
- 8 However, it was submitted by the applicant that the premises remain dated, are configured in a style that suited the 1980’s and suffers from a reputation that is not consistent with the current management of the premises.

- 9 The proposed upgrade will increase the current approved licensed area from 3,220m<sup>2</sup> to 4,990m<sup>2</sup>, the majority of which is attributable to the proposed new Dan Murphy's liquor outlet. The proposed upgrade is a major undertaking costing in the vicinity of \$6.5m.
- 10 The application states, "[Q]uite simply, all the applicant wants to do is to upgrade, replace and modernise the existing services and facilities (accommodation, various bars, entertainment facility, bistro dining facility, packaged liquor outlet and the two TAB facilities) so they are far better".
- 11 It was submitted that the upgrade and redevelopment is supported by:
- a) an expansion of the target market from its immediate neighbourhood to the greater Rockingham region and in particular the locality, which has a population of around 75,000 people;
  - b) overwhelming support from members of the local community;
  - c) the strategic location of the premises on a major arterial road adjacent to the Rockingham Regional Shopping Centre;
  - d) the scarcity of "Full Service Hotels" in the locality and the fact there are no hotels in the Rockingham CBD;
  - e) the fact none of the competing licensed premises provide a comprehensive range of hotel facilities to be provided in the proposed upgraded format of the premises;
  - f) developed in 1981, the premises are not in a style or format preferred by contemporary customers, which is having a detrimental effect on the business of the hotel; and
  - g) the lack of connectivity of the various facilities in the hotel also results in operational inefficiencies.
- 12 The applicant points to previous examples of hotel upgrades it has undertaken in Western Australia as evidence of the successful application of its business model which involves the preserving of existing hotels and adding to the services and facilities resulting in increased patronage and sales.
- 13 In this case, the applicant submits that the new and improved facilities will increase the focus on food service both in terms of the type of food offering and the décor and configuration of the eating areas, with an upgrade to the kitchen and the food preparation and service areas to improve efficiency and functionality.
- 14 The current entertainment facility will be also remodelled to improve flexibility to host functions when the designated entertainment area is not in use. Further, the type of entertainment and music will be "customer friendly" and more

mainstream, consistent with the current theme to cater for a wider trade catchment area.

- 15 Replacing the current BWS drive through liquor outlet, the proposed Dan Murphy's will be "a full scale purpose built liquor store, which will offer comprehensive, distinctive and unique retail packaged liquor services and facilities".
- 16 A range of factors have been addressed in the PIA in support of the submission that the grant of the application is in the public interest and includes a number of reports from various consultants, including:
  - a) an analysis and report on health and crime statistics comparing data for the City of Rockingham (as data for the locality is not publically available) with data for the South West Metropolitan Region and WA; ("Health and Crime Statistics Report")
  - b) a traffic impact assessment report; ("Traffic Assessment Report")
  - c) a review and report on the health, environmental and amenity aspects of the existing licensed premises; ("Other Licensed Premises Assessment")
  - d) trading activities of the premises; ("Licensed Premises Assessment");
  - e) a report on the Public Interest Assessment Health and Environment by Caporn Services ("Caporn Report"); and
  - f) a report on the regional and town planning aspects of the proposed redevelopment ("MGA Report").
- 17 In addition, the PIA was accompanied by:
  - a) a report on a community survey among residents of, and visitors to, the Rockingham locality (306 intercept interviews) designed to establish consumer attitudes towards the proposed development ("Community Survey");
  - b) a report on the geographical extent from which the upgraded premises would be expected to draw custom and related matters ("Trading Area Report"); and
  - c) a range of statements from the applicant's solicitors and industry professionals working for, or engaged by, the applicant including the architect engaged to prepare the plans for the upgrade and redevelopment, as well as a number of witness statements (Architect's Statement, Applicant's Statements and Witness Statements).
- 18 Various reports and a number of witness statements also support the common theme of the proposed upgrade of the facilities.

- 19 The applicant further submitted that:
- a) the expanded facility is estimated to create about 30 new employment opportunities due to the improvements and the anticipated increase in patronage;
  - b) the facility will also include the new State training facility for training staff to be employed in other outlets throughout the South West corridor;
  - c) the Premises are within the area zoned “Central City Area” under the Metropolitan Region Scheme and the redevelopment conforms to the City’s town planning scheme, commercial strategy and structure plan; and
  - d) the capital expenditure of approximately \$6.5 million will create an integrated hospitality destination which will be identifiably different from the current competing leisure, hospitality and liquor industry outlets throughout the Rockingham region, more in keeping with the regional role of the Rockingham CBD now and into the future.
- 20 The applicant has examined the socio-demographic and socio-economic profile of the various suburbs within that locality and contends:
- a) the overall demographic profile for the locality is of a mature age, predominantly Anglo-Saxon, English speaking with a Christian faith and “mixed” socio-economic standing;
  - b) whilst income levels are lower than the WA average, housing costs are low, and although unemployment is higher in the locality than the WA average, it is comparable to the greater Perth average;
  - c) of the “at-risk” groups identified in the Director’s Policy on Public Interest Assessments, the only group that has a higher representation than the WA average is single parent families (17.6% vs 14.5%), but there is nothing to suggest this group has experienced any greater liquor related harm or ill-health from the operation of the premises;
  - d) although in 2013 the locality experienced a higher aggregate crime per capita than the WA average, the proportion of alcohol-related crime is unknown;
  - e) for 2009-2010 and 2005-2009, the City recorded a lower proportion of alcohol-related assaults and alcohol-related hospitalisations respectively than the WA average;
  - f) although the premises are situated in “what was traditionally a lower socio-economic area” and which historically had “some significant security issues”, since the acquisition of the premises by the applicant there has been, and continues to be, a “very low rate of incidents throughout the

venue” particularly in the context of the patronage of around 20,000 per month;

- g) the absence of a liquor accord suggests that there is no need for a co-ordinated response to alcohol-related matters in the community;
- h) the impact of the current premises under the ownership of the applicant has been minimal and the design of the upgraded and redeveloped facility with increased open planning and the new secure packaged liquor outlet will ensure that security and surveillance operates more effectively;
- i) of the 15 commercial premises within the Rockingham area permitted to sell or supply liquor to the general public, two are hotels (the applicant’s premises and the Rockingham Hotel, which also has a drive through bottle shop), two are small bars, three are taverns, one with a drive through liquor outlet, and five are liquor stores all of which are some distance away (2-3 km approximately) except for the BWS store in the Rockingham Shopping Centre across Chalgrove Road from the premises;
- j) outside the locality there is a Dan Murphy’s and First Choice major retail packaged liquor outlet at a distance of 10.5 km and 11 km respectively from the premises;
- k) the applicant’s premises is the only licensed premises in the CBD that is a full service hotel and “it is evident that the range and diversity of full service hotels in the locality is severely lacking”;
- l) the independent marketing survey which comprised face to face interviews with 306 respondents (considered by the applicant to be a representative sample of residents) demonstrated, among other things:
  - i. very strong support for the proposed renovations (90% of respondents) across age, gender and family characteristics;
  - ii. 54% would use the Dan Murphy’s store more than the current drive through;
  - iii. 84% would more than likely use at least one of the refurbished facilities; and
  - iv. 23% would more likely use all facilities,

an outcome, the applicant contends, highlights strong demand for a range of integrated services and facilities at the one location;

- m) the consumer witness statements sought by the applicant to ascertain specific and more detailed views from the local community establish a clear demand for the modern, new style of venue proposed rather than the

existing premises, descriptions of which ranged from run-down and needing updating to “scabby looking” and “bogan”.

- 21 The applicant addressed the public interest requirements of the Act in the PIA with reference to the decision of the Supreme Court in *Woolworths Ltd v Director of Liquor Licensing*<sup>1</sup> which the applicant contends is relevant to the current application as:
- a) there is an abundance of evidence which demonstrates the applicant’s business model is a success, an outcome that will be replicated in this case;
  - b) there is a consumer requirement having regard to matters of taste, convenience, shopping habits and shopping preferences for the range of liquor products and services which the applicant proposes to provide; and
  - c) the proposed development meets the modern and diverse demands of the applicant’s customers and caters for, and reflects the diversity of, requirements of consumers consistent with the proper development of the liquor industry.
- 22 In addition to the material lodged with the PIA and initial submissions, the applicant lodged further reports and a number of witness statements including, but not limited to:
- a) a number of reports prepared by Data Analysis Australia (DAA), two dated 2010, and the other a critique of the academic research relied upon by the Police and EDPH dated 2016 (“DAA Reports”);
  - b) a report prepared by Social Impact Strategies (“Social Impact Strategies Report”);
  - c) a supplementary report prepared by MGA (“MGA Supplementary Report”);
  - d) further statements from the applicant’s Barry Cloke, National Property Manager, and Tim Osborne, State Manager (“Applicant’s Further Statements”).

### **Intervention and Objection by Commissioner of Police**

- 23 The Commissioner of Police (“Police”) initially lodged a notice of intervention pursuant to section 69(6)(c)(ii) and (iv) of the Act to make representations on the basis that if the application is granted and/or conditions not imposed public disorder or disturbance is likely to result and on other matters related to the public interest.

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<sup>1</sup> [2013] WASC 227



- 24 Subsequently, the Police lodged a notice of objection pursuant to section 73(1) of the Act to make representations that the grant of the application would not be in the public interest pursuant to section 74(1)(a) of the Act and would cause undue harm or ill-health to people, or any group of people, due to the use of liquor pursuant to section 74(1)(b) of the Act.
- 25 The Police have minimal concerns regarding the proposed upgrade of the applicant's hotel premises. The principal focus of the objection is the conversion of the existing BWS store at the premises to a large format Dan Murphy's store.
- 26 In the intervention, the Police express concerns that there is already a degree of harm occurring in the locality and the approval of the application will increase this harm, highlighting the statistics relating to alcohol and non-alcohol related offences specific to the suburb of Rockingham commenting that "alcohol is quite prevalent in crimes such as recent sexual assaults, domestic assaults and non-domestic assaults".
- 27 The Police also provide a breakdown of alcohol-related offences for various individual suburbs in the Rockingham Police District concluding that there is "a significantly high rate of alcohol related crime in Rockingham when compared to neighbouring suburbs" and that any further increase would be intolerable.
- 28 The Police consider that aspects of the intended manner of trade and marketing principles specific to the proposed Dan Murphy's store are not in the public interest, particularly having regard to the locality to which the application relates.
- 29 By reference to research in the United Kingdom, the Police contend that the availability of cheap discount liquor coincides with unacceptable levels of harm and that the Dan Murphy's marketing strategy of "lowest price guarantee", coupled with discounts for bulk purchases is not in the public interest (in terms of the protection of the public from harm) and that the grant of the application will raise the level of harm in the locality.
- 30 The Police objection:
- a) outlines the serious nature of family and domestic violence;
  - b) contends alcohol is a common contributing factor and submits, by reference to a report of the Australian Institute of Criminology, that a significant number of domestic violence incidents are not reported to police;
  - c) highlights that 85% of all family and domestic violence referred to the Lucy Saw Women's Refuge Centre in Rockingham is alcohol related and that in the view of the Executive Officer of the Centre, "another cheap alcohol outlet would impact greatly on victims of family and domestic violence, and especially the wellbeing of young vulnerable people within the community".

- 31 Police recordings show a high number of domestic related incidents in the suburb of Rockingham with a “distinctly higher rate” than similar neighbouring suburbs, such as Port Kennedy and Baldivis.
- 32 The Police also point to a number of research findings to support the proposition that there is a causal relationship between alcohol consumption and domestic violence, and a relationship between outlet density, consumption and violence and crime.
- 33 In an endeavour to assess the impact on the community of the introduction of a Dan Murphy’s store, the Police conducted an analysis of the crime data before and after the introduction in 2004 of a Dan Murphy’s store in Balga, a suburb of Perth the Police contends has a similar demographic profile to that of Rockingham.
- 34 Based on this analysis, the Police submit that there was “a significant spike” in offences in 2004 and 2005 (at a time when Balga experienced a decrease in population between 2001 and 2006) and “speculates that this spike was caused by the approval and operation of the Dan Murphy’s store”.
- 35 The concerns of the Police about the manner of trade, marketing principles and liquor discounting of the proposed Dan Murphy’s store arise because the Police consider “at risk” people, who tend to be socially marginalised without support and supervisory networks and who have limited disposable income, will be able to purchase more liquor than they otherwise would, and, as a result, there is a greater chance they will consume liquor and become intoxicated more regularly, and be more likely to commit offences.
- 36 The Police contend that the focus of the applicant on the number of product lines and references to premium wines and liquor products to be stocked by the proposed Dan Murphy’s store without revealing information relating to actual product sales or the proportion of low cost product products sold tends to suggest that Dan Murphy’s stores do not sell a significant amount of low cost liquor when, in fact, as is evident from interventions by the Police and EDPH in previous applications, the sale of low cost liquor is a matter of enormous significance to the issue of harm and ill-health that may result for the grant of an application.
- 37 The Police analysed the median house price and incomes in areas in WA in which Dan Murphy’s stores are located and concludes from that analysis that 7 of the 12 stores are in areas in which the median house price is lower than the median house price for Perth and that some of the suburbs are significantly disadvantaged in terms of income compared to the WA State average. It is contended that this analysis suggests that rather than catering for consumers seeking premium wines and a broad range of product, these stores predominantly cater to consumers in these areas by offering cheap liquor products.
- 38 In the view of the Police, the discounting of liquor products, particularly the discounting of cheaper liquor products, means that “at risk” persons who

previously chose to purchase the cheapest items available at the existing BWS store at the Premises would be able to purchase in excess of a third more liquor.

- 39 Further, a review of the “current offers” advertised by Dan Murphy’s, for a specific day selected by the Police, showed that 25 of the 48 products discounted were priced under \$10.
- 40 The Police conclude from a review of the marketing and advertising strategies adopted by Dan Murphy’s (as evident from its internet web page, print media and external and internal advertising at its stores) that in contrast to the focus in the PIA on offering a large range of high quality liquor products, the Dan Murphy’s brand is designed to appeal to the public by providing a discount liquor outlet; by offering liquor cheaper than its competitors; by providing discounts on bulk purchases; and by offering price guarantees against its competitors.
- 41 The practice of selling cheap liquor and offering discounts for bulk purchases of cheap liquor products is an aspect of the Dan Murphy’s business model that the Police consider is not in the public interest as it will lead to a significantly higher rate of liquor consumption and higher rates of crime and domestic violence.
- 42 It is submitted that the Dan Murphy’s stores do not promote the sale of liquor responsibly and in doing so contravene the Director’s policy on the responsible service of liquor.

#### **Intervention by the Executive Director of Public Health**

- 43 The Executive Director of Public Health (“EDPH”) has lodged an intervention pursuant to section 69(8a)(6) of the Act to make representations to establish that the characteristics of the proposed Dan Murphy’s store (large format, cheap alcohol, high volume capacity, convenience) when combined with the vulnerabilities of the local community, are likely to cause harm or ill-health to people, or a group of people, if the application is granted.
- 44 The focus of the intervention is the Dan Murphy’s component of the upgraded and redeveloped premises, noting that the area of the existing BWS store of approximately 120 m<sup>2</sup> (59 m<sup>2</sup> of browse area and 61 m<sup>2</sup> cool room) will, if the Dan Murphy’s store as proposed is granted, increase to 1,100 m<sup>2</sup> (997 m<sup>2</sup> browse area and 103 m<sup>2</sup> cool room).
- 45 As a consequence, the Dan Murphy’s store will significantly increase the physical availability of liquor, which, according to the EDPH, is a relevant consideration as past and recent research and reviews demonstrate a positive relationship between the availability of alcohol and associated harm, problems and ill-health, and the locality, which already contains multiple packaged liquor outlets is currently experiencing negative alcohol related health and social concerns.
- 46 Further, the characteristics of the proposed Dan Murphy’s store distinguish it from other liquor outlets and all of these factors have the potential to impact on

the amount of liquor purchased, the frequency of purchases and related consumption and the potential harm and alcohol-related problems.

47 Based on the analysis of price comparisons for various types of liquor at Dan Murphy's and a selection of other stores in the locality, the EDPH concludes:

- a) the economic availability of alcohol in Rockingham is likely to increase significantly; and
- b) lower priced products, for example in the \$0 - \$9.99 price range, are a key feature of Dan Murphy's.

48 By reference to relevant research and literature, the EDPH also highlights the following propositions:

- a) there is a relationship between price, consumption and harm;
- b) a reduction in price can result in an increase in consumption and vice versa;
- c) low/competitive price positioning is particularly significant in low income areas where the vast majority of consumers will attempt to maximise the quantity of liquor purchased for a given amount;
- d) low/competitive price positioning and greater exposure to stock ranges and layout can also result in customers purchasing more than planned and then consuming more overall than if they had not purchased in bulk;
- e) the provision of alcohol at lower cost is known to increase consumption among various groups, especially those on limited incomes;
- f) overall, lower prices impact the risk of harm, not just to "at risk" persons, but in the longer term, the broader community;
- g) it is likely that many people will purchase alcohol when they would otherwise not be considering a purchase due to the high visibility and convenience of the Dan Murphy's store (in conjunction with the lowest price guarantee and cheap liquor availability); and
- h) packaged alcohol sales by liquor stores has been shown to be positively related to levels of assaults, road crashes, drink driving and alcohol related hospitalisations which is particularly relevant due to the level of domestic assaults in the Rockingham locality.

49 In addition, the EDPH has examined the demographic profile and community characteristics of the locality and submits:

- a) the applicant has "underplayed the disadvantage in the Rockingham area";

- b) using the Socio Economic Indexes for Areas (SEIFA) as a measure, and consistent with the comments of some local service providers, a number of suburbs in the locality, including Rockingham, are relatively disadvantaged in comparison to other suburbs in the State which may contribute to the disproportionate morbidity and reduced life expectancy of those in disadvantaged socio-economic circumstances;
  - c) socio-economic circumstances can influence drinking behaviours and “at risk” groups are more sensitive to the price of alcohol which can influence the amount of alcohol consumed;
  - d) within the cycle of economic disadvantage, unemployment exacerbates alcohol related problems and unemployment rates for the City of Rockingham have been consistently above the State and Perth unemployment rates since 2012;
  - e) the proposed Dan Murphy’s store is in close proximity to places popular with young people and where young people congregate, and based on comments from some service providers who treat young people with alcohol related and other problems, easier access to alcohol, because of price or range, has the potential to further contribute to the health and well-being problems of these young people.
- 50 The EDPH refers in some detail to the information provided by the following service providers:
- a) the Multisystemic Therapy Team (five psychologists) for Child and Adolescent Mental Health, Southern Metropolitan region, who work with adolescents referred to them through schools, the Department of Child Protection and other community services; (“Multisystemic Therapy Team”)
  - b) Headspace Rockingham, which provides mental health and wellbeing services for young people; (“Headspace Rockingham”)
  - c) Palmerston Association which provides treatment services to individuals whose lives are affected by alcohol and drugs; (“Palmerston Inc”) and
  - d) Perth South Coastal Medicare Local who provide primary health care within the community.
- 51 As in the objection lodged by the Police, the EDPH highlights the period between 1 January 2011 and 31 May 2014 referencing the level of domestic and non-domestic assaults in the various suburbs within the locality, as well as drink driving offences, pointing out the number of alcohol related assaults for each suburb (for Rockingham about 1 in 3 domestic and non-domestic assaults involved alcohol) and drink driving offences involving packaged liquor (again for Rockingham, about half of the drink driving offences involved packaged liquor consumption).

- 52 Additionally, the EDPH provides statistics for alcohol treatment episodes from the Drug and Alcohol Office noting that residents of Rockingham represent the highest proportion of treatment episodes and that in almost 1 in 3 treatment episodes alcohol was the primary drug of concern.
- 53 Overall, the level of alcohol related hospitalisations for the Rockingham area was lower than the State, but higher for some specific alcohol related conditions, such as alcoholic liver cirrhosis.

### **Objections**

- 54 In addition to the objection from the Police, three further objections have been lodged pursuant to section 73(4) of the Act.

#### *Rockingham Seventh-day Adventist Church, Rockingham*

- 55 The members and Church Board object to the application on the grounds the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor, citing the State Government's warnings on the physical effects of over-indulgence of alcohol, the reputation of Western Australians as "big drinkers", the cost to the State of alcohol related harm and the reputation of Rockingham City as a place where people drink alcohol to excess as reasons for the objection.

#### *Mr T Mathews*

- 56 A long term resident and business owner, Mr Mathews objects on the grounds:
- a) the proposed reduction in the overall space of the refurbished hotel in order to greatly increase the floor area of the packaged liquor outlet is not in the public interest particularly having regard to the increase in population;
  - b) changing the drive through facility to a park and walk-in facility will, given the surrounding facilities, car parks and public open space, increase the incidence of public drinking;
  - c) the close proximity of the Rockingham Senior High School and passing traffic from the school to the nearby Shopping Centre will increase the incidence of third party supply to school children; and
  - d) the PIA is deficient as it does not identify two stores within the locality (Cellarbrations Safety Bay – 4 km away and Malibu IGA Liquor Outlet – 3 km away) both of which provide a wide range of products and product knowledge (Mr Mathews declares a pecuniary interest in the Cellarbrations store).

*Mr L Smith*

57 A resident of Rockingham since 1968, Mr Smith believes Rockingham already is “very well catered for liquor outlets” and submits a new Dan Murphy’s outlet would have a marked downturn on a number of existing liquor stores that can be accurately described as small businesses, with a “disproportionate loss of employees”.

**Response on behalf of the applicant**

58 In respect of the evidence presented by the EDPH and Police, the applicant responds:

- a) the analysis undertaken by DAA and Social Impact Strategies casts significant doubt on the utility of the evidence of the Police and the EDPH and shows the level of harm within the locality appears to be no higher than appears to be commonly accepted elsewhere in the community;
- b) there is very little evidence presented to demonstrate that the existing BWS store contributes to the existing level of harm and ill-health in the community;
- c) the existing level of domestic violence has not been shown to be connected to the BWS store at the premises;
- d) the applicant has demonstrated that the introduction of a Dan Murphy’s store into the community results in minimal or no negative impacts;
- e) the proposition of the EDPH and the Police that the increase in products available at the proposed Dan Murphy’s store will result in the increase in consumption of liquor is not sustainable as despite the increase in stores throughout Australia between 1998 and 2016 overall consumption in Australia has actually fallen;
- f) whilst Dan Murphy’s “sell many products at low price points, it also stocks a large range of products at high price points” and the experience and evidence gathered by the applicant makes “it tolerably clear that the majority of Dan Murphy’s customers are most unlikely to be vulnerable people, on limited incomes, purchasing small amounts of cheap alcohol”;
- g) the potential increase in harm from the introduction of the Dan Murphy’s store over that already occurring in the community (which is not high or unacceptable) is extremely small, and the positive benefits of the application greatly outweigh any perceived and alleged risks of harm; and

- h) it is not in the public interest to leave the premises in its current out-dated state, nor is it in the public interest “to deprive this significant metropolitan region of the significant development in retail that is available elsewhere”.
- 59 In addition, the claim that the applicant has not demonstrated a consumer requirement for the Dan Murphy’s store contrasts with the contention that the application should be refused because the Dan Murphy’s store will attract considerable patronage. Furthermore, it is no answer to say that just because some items do not rank in the products sold that there is no consumer requirement for them.
- 60 The applicant contends there is no evidence upon which the Commission can conclude that the grant of the application will result in the domination of the industry in the locality to the extent it would be contrary to the proper development of the industry.
- 61 It was submitted that the relevance to the locality of the data relied upon by the EDPH to establish that per capita consumption of alcohol in WA has increased in comparison to Australia is questionable, as high rates in specific regions skew the rates, Rockingham is an entertainment precinct with a number of tourist venues and WA has been in boom conditions in recent years all of which are recognised as factors that may affect average rates.
- 62 Moreover, alcohol is already available in the locality and the refusal of the application will not ameliorate this, and for “at risk” persons to be negatively affected their pattern or level of consumption will have to change due to the application.
- 63 The grant of the application will not eradicate harm and cannot eliminate the risk of harm, but it does present a significant improvement over the present circumstances.
- 64 In response to the claim by the Police that Dan Murphys’ predominantly sells cheap liquor, the applicant submits that when analysing and interpreting data, different results can be achieved depending on how it is categorised, and contends:
- a) the most important part of the data is that there is a proportion of cheap alcohol sold at Dan Murphy’s, but it “tells us nothing about who is purchasing the alcohol and consuming it”;
  - b) evidence and modelling of purchasing patterns of Dan Murphy’s customers demonstrates that Dan Murphy’s customers:
    - i. generally buy in bulk;
    - ii. include restaurateurs, event organisers, clubs and business owners; and



- iii. irrespective of the locality of the store, about 25% will purchase premium products with at least 40% choosing “mid-range” products.

### **Further and Responsive Submissions on behalf of the Police**

65 The Police further contend that:

- a) there is little or no direct evidence as to how the proposed Dan Murphy’s store adds to the proposed development or explanation of why the application could not be granted without the proposed Dan Murphy’s store;
- b) the applicant’s survey was framed overwhelmingly in terms of the upgrade to the tavern with minimal reference to the proposed conversion of the BWS to a Dan Murphy’s store;
- c) the applicant has not established a consumer requirement for the proposed Dan Murphy’s store and certainly not for a wider range of products or for a wide range of premium wines, which the Police contend is not a product that would be sought by many people living in the locality;
- d) the evidence relating to sales at Dan Murphy’s indicated the vast majority of Dan Murphy’s sales are likely to be identical to the sales of the existing BWS, albeit in larger volumes at cheaper prices;
- e) despite the 4,000 or so product lines that Dan Murphy’s proposed to stock, based on the evidence of the sales of the Dan Murphy’s Mandurah, 1380 top selling product lines amount to about 90% of the stores sales by number of stock unit sold, which equates to, for example, Liquorland Baldivis which carries approximately 1380 different product lines;
- f) there is strong evidence that the proposed Dan Murphy’s store would sell products comparable to the 10 existing liquor stores in the locality even if it stocks a wider variety; and
- g) based on the analysis of the sales data for Dan Murphy’s stores, Dan Murphy’s stores sell vast quantities of cheap liquor.

66 While it is accepted by the Police that there is no other Dan Murphy’s or First Choice store within 10 km of the Premises, the Police submit, with reference to the witness statements from liquor store owners/operators who have experienced the impact of the new Dan Murphy’s stores on their business, granting of the application will have a tendency of stifling or destroying diversity and promoting a duopoly in the liquor industry.

67 In relation to the potential for an increase in harm or ill-health if the application is granted, the Police re-iterate and further submit that a Dan Murphy’s rebranding of the BWS store will, in all likelihood, result in:

- a) a decrease in the prices of alcohol sold;
  - b) a significant increase in customer numbers and sales;
  - c) a substantial increase in liquor sales and consumption in the locality, even accepting some degree of outlet substitution; and
  - d) an increase in the level of alcohol related harm which is likely to be felt acutely by heavier and younger drinkers, who are more price sensitive than other drinkers.
- 68 The Police contend that the locality is socio-economically disadvantaged with a higher rate of unemployment compared to the State average (11.0% vs 5.5% in March 2016) and that relatively disadvantaged people report higher alcohol consumption levels and also spend a larger proportion of their household income on alcohol.
- 69 Clients from “at-risk” groups are also likely to be attracted to the proposed Dan Murphy’s store because of its reputation as a provider of alcohol at the cheapest price.
- 70 In assessing the public benefits likely to be derived from the grant of the application, the Police refer to the improvements made to the tavern to date and contend that it does not appear that the proposed services differ from those already provided. Rather, in many respects the services will be duplicative of those already available in the locality.
- 71 The claim by the applicant that “the vast majority of Dan Murphy’s customers are most unlikely to be vulnerable people, on limited incomes, purchasing small amounts of cheap liquor” is flawed as no attempt has been made to quantify the number of customers who are vulnerable people, nor is there any basis for assuming vulnerable people only buy cheap liquor or only buy it in small amounts.
- 72 The Police submit that in light of the current level of crime in the suburb of Rockingham and the fact the majority of alcohol related domestic violence offences result from pre-packaged liquor purchased in liquor stores, even a small increase in crime as a result of granting the application cannot be tolerated.
- 73 In contrast to the applicant’s claim that the declining average per capita consumption of liquor shows that the increasing availability of liquor does not increase consumption, the Police contend, by reference to recent research of changes in alcohol related mortality and morbidity in Australia over the period 2001-2010, that:
- a) while the number of abstainers has increased, the proportion of heavy alcohol consumers has increased; and

- b) alcohol related harm has increased while consumption has remained relatively stable.

### **Further and responsive submissions on behalf of the EDPH**

- 74 The EDPH largely reiterated its primary submissions in its responsive submissions. It rejects the applicant's reference to accepted studies and literature on availability, use and supply of alcohol as "a plethora of general studies", but, rather, considers them to be a source from which reasonable inferences may be drawn when assessed with the locality specific evidence addressed by the EDPH.
- 75 The EDPH also points out that the DAA Rockingham Report upon which the applicant has sought to rely has not been subject to the same level of review as the peer reviewed literature referred to by the EDPH, and does not enjoy the scientific credibility of the works the DAA report seeks to criticise.

### **Statutory Framework**

- 76 In *Woolworths Ltd v Director of Liquor Licensing*<sup>2</sup> His Honour Buss JA set out the statutory framework for a determination of this nature in the following terms, namely:
  - a) by section 38(2) of the Act, an applicant has to satisfy the Commission that the granting of an application is in the public interest;
  - b) the expression 'in the public interest', when used in a statute, imports a discretionary value judgment;<sup>3</sup>
  - c) the factual matters which the Commission is bound to take into account, in determining whether it is satisfied that the granting of the application is in the public interest are those relevant to the objects of the Act, as set out in section 5(2) of the Act;
  - d) the factual matters which the Commission is entitled to take into account, in determining whether it is satisfied that the granting of an application is in the public interest are those set out in section 38(4) of the Act;
  - e) section 5(2) is mandatory whereas section 38(4) is permissive;

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<sup>2</sup> *supra*

<sup>3</sup> *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson & Gaudron JJ). If the statute provides no positive indication of the considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of 'the public interest' will ordinarily be confined only by the scope and purposes of the statute.

f) on the proper construction of the Act (in particular, sections 5(1), 5(2), 16(1), 16(7), 30A(1), 33 and 38(2)), the Commission is obliged to take into account the public interest in:

- catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry in the State; and
- facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State.

77 Pursuant to section 73(10) of the Act, an objector bears the burden of establishing the validity of the objection. Pursuant to section 74(1) of the Act, such objection can only be made on the grounds that:

- a) the grant of the application would not be in the public interest; or
- b) the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or
- c) that if the application were granted:
  - undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or
  - the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened;
- d) that the grant of the application would otherwise be contrary to the Act.

78 Each application must be considered on its merits and determined on the balance of probabilities pursuant to section 16 of the Act. However, it is often the case when determining the merits of an application that tension may arise between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services. When such circumstances arise, the licensing authority needs to weigh and balance those competing interests.<sup>4</sup>

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<sup>4</sup> *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA

- 79 The task before the Commission is to assess whether the applicant has discharged its onus and demonstrated that the grant of the application is in the public interest and in doing so to weigh and balance the competing objects of the Act, specifically, in this case, the primary objects (sections 5(1)(b) and 5(1)(c)), and the secondary object (section 5(2)(a)), and have regard to section 38 of the Act.
- 80 Neither of the primary objects takes precedence over the other, but to the extent that the Commission considers there is any inconsistency between the primary objects and the secondary objects, the primary objects take precedence.

### **Consideration of the applicant's submissions**

- 81 As this application relates to not just the upgrade of the internal food and beverage and related facilities, but includes the development of a new Dan Murphy' packaged liquor outlet, the applicant is required to demonstrate that the grant of the application is in the public interest.
- 82 From a public interest perspective, the fact that the application relates to the establishment of a new Dan Murphy's store, connected to, or "integrated" with, the upgraded and refurbished hotel, and extent to which that combined development responds to the requirements of consumers and delivers benefits to, and is supported by the local community, is an important consideration.
- 83 Various throughout its submissions, the applicant has submitted that:
- a) the premises are of a 1980's design and décor, are old fashioned and are not in keeping with modern and contemporary standards or customer expectations;
  - b) the presentation and décor of the venue differs greatly throughout due to the ad hoc additions over the years and that there is an inconsistency in the overall themes in the various areas of the hotel;
  - c) the kitchen and service areas lack proper connectivity resulting in operational inefficiencies;
  - d) the premises still suffer from a reputation as being "a bit bogan";
  - e) patronage is predominantly male dominated and the premises fail to appeal to a broader demographic (although see statements below which suggest a broad range of patrons, including women and families);
  - f) the BWS bottle shop is small, offers limited products and browse area and is "overtraded"; and
  - g) the accommodation component of the premises is out-dated.

- 84 Notwithstanding these shortcomings, the applicant and its consultants have also submitted that:
- a) through the implementation of innovative marketing and sound marketing strategies, the applicant has turned the business around by increasing the venue's appeal and customer base across the multiple facilities on offer, so much so that it now provides services and facilities to around 5,000 people per week;
  - b) the substantially higher overall trading figures post acquisition are indicative of the premises catering for a larger number and wider range of consumer requirements, requirements that expanded from the neighbourhood to the region;
  - c) the customer base is extremely broad due to the wide range of facilities with patrons covering all ages and ranging from couples, to groups of men and women, mixed groups, and family groups;
  - d) entertainment is a big drawcard, but food is the main drawcard of the premises, with the business serving somewhere around 1200–1500 meals per week; and
  - e) the premises are a very busy and popular hospitality venue and are regarded by many as their "local pub".
- 85 Overall, the upgrade of the on-site food and beverage facilities will allow for an increase in the number of tables and chairs, but the applicant is not seeking "to increase the capacity of patrons as a result on this increase". Rather, the additional space is to assist in "growing the food component of the business".
- 86 The proposed redevelopment is also said by the applicant to be in line with and contributing to Rockingham's transition from a "commercial" centre to a satellite city with a truly regional function by having the development constructed along the front boundary with windows and doors addressing the street, enabling, and contributing to, a better integration with neighbouring developments and by encouraging pedestrian activity along Chalgrove Avenue.
- 87 The applicant and its consultants have presented the premises as a fully serviced hotel (i.e. accommodation, function, bar, bistro, live entertainment and packaged liquor facilities) and highlighted the fact that other than the premises "there are no other 'Full Service Hotels' within the Rockingham CBD".
- 88 For example, in the PIA, the applicant states that, "It is evident that the range and diversity of Full Service Hotels in the Locality is severely lacking. The Proposed Upgrade seeks to change that and introduce something different. The redeveloped hotel will be the only hotel in Rockingham able to supply the large matrix of hotel facilities expected, and needed, for a modern city."

- 89 The lack of quality tourist accommodation to cater for overnight visitors to Rockingham has been described by the City of Rockingham as one of the reasons Rockingham has not progressed from a day trip destination to a true overnight tourism destination (Economic Development Strategy 2014 – 2017).
- 90 There is little or no evidence of the extent to which the accommodation component of the premises will be upgraded, if at all. Indeed, the number of motel units is to be reduced.
- 91 It would appear unlikely, therefore, that the proposed upgrade will enhance this aspect of tourism in Rockingham, except to the extent the upgraded premises and other facilities it offers may be an attraction for visitors to the area.
- 92 The assessment of traffic generation resulting from the proposed redevelopment has concluded that the development will not have an undue impact on the abutting road environment.
- 93 The nature of the dual lane carriageway between the proposed Dan Murphy's store and the Rockingham Shopping Centre is such that to cross safely requires a walk of some distance to the traffic lights at the intersection of Chalgrove Avenue and Read Street.
- 94 Although the premises are clearly very popular and cater to a wide range of customers, it would appear that the building is relatively unattractive and out of date. As is also evident from the many submissions, the internal facilities, including the motel accommodation, would benefit from the proposed upgrade.

**Consumer requirement and facilitating the use and development of licensed premises - Section 5(1)(c) and section 5(2)(a)**

- 95 Section 5(1)(c) of the Act contemplates that the grant of the application will “cater for the requirements of consumers of liquor, with regard to the proper development of the liquor industry, tourism industry and other hospitality industries in the State”.
- 96 Clearly, catering for the requirements of consumers of liquor means more than simply making liquor and related services available or providing liquor and related services for consumers.
- 97 The requirement is well described by the applicant in the PIA as necessitating a consideration of “matters of taste, convenience, shopping habits and shopping preferences for a range of liquor products and services which the applicant proposes to provide”.
- 98 Further, the provision of the liquor products and services in response to these consumer requirements must be consistent with, and contribute to, the proper development to the liquor industry, the tourism industry and other hospitality industries.

- 99 Various throughout the applicant's submissions, the applicant contends that the upgrade and redevelopment of the premises is supported by the local community, and that there is a demonstrated requirement of consumers for the proposed upgrade.
- 100 This, the applicant contends, is evidenced by:
- a) the existing, and growing patronage of the premises' services and facilities, fostered by the applicant since acquiring the venue;
  - b) overwhelming support for the proposed upgrade for members of the local community by reference to the Community Survey outcomes;
  - c) contemporary consumer requirements for more sophisticated hospitality services and facilities; and
  - d) the popularity and success of the applicant's business model of redeveloping venues in Western Australia and other parts of Australia.
- 101 There is no contention of any note among the parties to these proceedings that the upgrade to the onsite food and beverage, and related facilities, is a positive development. Indeed, given it is common for premises of this nature to undergo redevelopment periodically to remain current and competitive, it would be surprising if the views of the parties, or the broader community for that matter, were any different. Some of the customers who currently enjoy the existing facilities may have varying views, but overall it appears these onsite changes are supported.
- 102 However, to determine if there is support for the proposed Dan Murphy's store among residents and visitors, and if the proposal is responding to the requirements of consumers of liquor, it is necessary to examine the results of the Community Survey.
- 103 In some past decisions the Commission has commented on, and in some cases expressed reservations about, the usefulness of surveys to assist in determining the preferences and requirements of consumers of liquor and the expectations and views of those living in the locality or otherwise impacted by an application. However, if objectively and properly constructed and conducted, a survey can provide an insight into the attitudes and expectations of consumers of liquor and other members of the local community affected by an application.
- 104 Bearing in mind the onus is on the applicant to demonstrate that the grant of the application is in the public interest, the applicant must point to objective evidence that the application is responding to the requirements of consumers in the local community. It has sought to do this, in part, by undertaking the Community Survey.



- 105 The applicant contends in the PIA that the market survey of representatives of the local community and visitors to the area evidence “overwhelming support for and negligible opposition to the Proposed Upgrade”.
- 106 The Community Survey is of 306 respondents. The sample of respondents to the survey is considered by the applicant to be “a representative sample of residents and visitors of the Locality”. Criticism was made on behalf of the police as to the size of the survey sample, however the Commission considers that in this instance, the sample size is such as to give a valid range of responses from which conclusions may be drawn.
- 107 On the basis that the survey sample is representative of the locality, the applicant has highlighted that:
- a) 90% of respondents support the renovations;
  - b) 84% of respondents reported they are more likely to use at least one of the refurbished facilities at the premises; and
  - c) 54% stated they would use the proposed Dan Murphy’s store more than the current drive through.
- 108 The applicant also states that it is significant that 23% of the respondents indicated they are likely to utilise all the main components of the proposed upgrade. This, the applicant contends, is because it highlights that there is a strong demand for a range of integrated services and facilities at the one location, such as the proposed upgraded Leisure Inn will offer.
- 109 Based on the totality of the evidence, the Commission is satisfied that the granting of the application would be consistent with the primary and secondary objects of the Act relating to consumer requirement.

## **Diversity**

- 110 The Police have expressed a concern that the grant of a Dan Murphy’s outlet will adversely impact on the diversity of packaged liquor outlets and the liquor industry, as the business model and marketing strategy of Dan Murphy’s to guarantee the sale of liquor at the lowest price places pressure on other outlets to lower prices, reduce margins and in some cases, judging from the experience of some independent operators who have presented statements, to go out of business.
- 111 The applicant’s response is that, “there is no evidence upon which the Commission can conclude that the grant of the Application will result in the domination of the industry in the locality to the extent that it would be contrary to the proper development of the industry.”

- 112 Certainly, the evidence produced by the Police falls short of demonstrating that the grant of this application would result in a domination of the industry.
- 113 Some of the small store operators who have submitted statements into evidence have experienced reductions in sales of varying magnitude.
- 114 Notwithstanding the financial interest some of these operators have in preserving the status quo, their experience is, nevertheless, instructive on the potential impacts on diversity of the introduction of large format liquor stores with the business models and marketing strategies of a First Choice and Dan Murphy's store in certain circumstances.
- 115 Whilst the Commission is not persuaded that the grant of this particular application would adversely affect diversity to the extent of putting other stores out of business, a decline in turnover of the magnitude experienced by some of the liquor store operators who have presented statements would be expected to impact the quality of the small liquor store operators' businesses in the locality.

#### **Section 5(1)(b) - Harm and ill-health**

- 116 In assessing the potential harm and ill-health impacts that may result from the grant of the application, the decision of Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*<sup>5</sup> provides instruction on the reasoning process that the Commission should follow, that being:
- a) make findings that specifically identify the existing level of harm and ill-health in the locality 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 relevant factors to determine whether it is in the public interest to grant the application.

#### *Existing level of harm and ill-health in the locality*

- 117 There is a significant disagreement between the parties as to the existing levels of harm and ill-health in the locality.
- 118 What is important and the task before the Commission is to identify the level of alcohol related harm and ill-health in the community and endeavour to determine

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<sup>5</sup> [2015] WASC 208

whether the change in the nature of the premises, including the replacement of the BWS store with a new Dan Murphy's store, is likely to result in an increase in the level of alcohol related harm in the community (and the level of that harm).

- 119 The Police and EDPH contend that the level of crime in the suburb of Rockingham is significantly higher than the State average and the level of alcohol related crime is higher than the State average.
- 120 The DAA Rockingham Report has pointed out some inconsistencies in the Police data of offences and incidents, and concluded that "overall it is not possible to know what the data actually represents". The discrepancies highlighted by the DAA Rockingham Report are clearly apparent.
- 121 Despite the inconsistencies, the Commission is satisfied from the data that a reasonable assessment can be made about the level of domestic and non-domestic assaults for Rockingham and the various suburbs within the locality, and the relative rates of assaults, both domestic and non-domestic and alcohol and non alcohol-related, between Rockingham and the State.
- 122 For example, to illustrate the relative level of offences for the three suburbs with the largest populations in the locality put forward by the applicant, the data for 1 January 2011 to 31 May 2014 reveals the total number of assaults is as follows:
  - a) Rockingham (population 14,161): domestic assaults: 350 (104 alcohol related)/non-domestic assaults: 599 (190 alcohol related)
  - b) Port Kennedy (population 14,103): domestic assaults: 216 (76 alcohol related)/non-domestic assaults: 140 (30 alcohol related)
  - c) Warnbro (population 11,102): domestic assaults: 246 (72 alcohol related)/non-domestic assaults: 242 (45 alcohol related)
- 123 The applicant refers to the DAA Rockingham Report and Social Impact Strategies Report and submits that the locality is not experiencing any greater levels of alcohol related harm than that which would be expected or appears to be commonly accepted in the community; and that "much of the data and studies relied upon by the EDPH and Police do not support the submissions they present".
- 124 The analysis undertaken by the Police over the period 2010 to 2015 reveals that for the suburb of Rockingham:
  - a) the total number of offences is higher than the State rate;
  - b) the level of non-domestic assaults and alcohol related non-domestic assaults is higher than the State rate, although alcohol related non-domestic assaults have been declining since 2013 when, according to Police, some stringent conditions were imposed on a nightclub in Rockingham which has since ceased trading;

- c) the level of domestic assaults is higher than, and has been rising consistently with the State rate, and the level of alcohol related domestic assaults, although lower over the previous five years, is now slightly above the State rate; and
  - d) for domestic violence incidents and offences, the last alcoholic drink consumed by the offender was consumed in almost all cases away from licensed premises and in about 80% of the cases in a house.
- 125 Other data and evidence that the Commission has taken into account in assessing the existing levels of harm and ill-health associated with the use of liquor include drink driving data, alcohol treatment episodes and alcohol related hospitalisation data.
- 126 Comparative figures are useful in determining the relative level of harm or ill-health in a community and whether a population has a particular propensity to experience alcohol related harm or ill-health, but, of course, the rate relative to another locality, whatever it may be, does not lessen the significance of the impact on the community of a likely increase in the level of harm or ill-health should that be a likely consequence of the granting of an application.
- 127 The Commission finds that there are existing levels of harm and ill-health in the locality associated with the use of liquor and that in a number of regards the statistics giving rise to this finding are higher than in other parts of the State. Notwithstanding this finding, the task before the Commission is to determine whether the granting of the application will increase such harm and ill-health and if so, whether any such increase is outweighed by the benefits to the community of the granting the application.

*Likely degree of harm to result from the grant of the application*

- 128 The applicant has presented evidence that the introduction of a Dan Murphy's store results in minimal or no negative impacts which provides compelling evidence to assist the Commission in assessing whether an increase in harm and ill-health is, or is not, likely to result if the application is granted.
- 129 The applicant has also provided evidence of some case studies to demonstrate that the introduction of a Dan Murphy's store in particular locations has not resulted in any measurable adverse impacts on crime rates, alcohol consumption or social issues.
- 130 The Commission is not persuaded that any significant weight can be attached to either the Ballina Study or the DAA Balga Report because of the limitations as highlighted by the Police in those studies.

- 131 There is disagreement between the parties as to the exact extent and impact of price differentials between a Dan Murphy's store and other liquor stores, and the impact of prices on levels of consumption and harm.
- 132 Predicting the likelihood of an outcome is not an easy task and both sides have presented evidence and submissions in support of their contentions. Ultimately, the Commission is satisfied that the granting of the application would result in an increase in harm and ill-health due to the simple fact that more alcohol will be available for sale. However, the Commission is then required to consider the effect of the predicted level of harm against the existing levels of such harm.

Assessment of the likely increase in harm against the existing level of harm

- 133 In *Liquorland (Australia) Pty Ltd v Executive Director of Public Health*<sup>6</sup> Edelman J stated that, "In assessing...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 in 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".
- 134 As the existing level of alcohol related harm and ill-health in the community of Rockingham, the suburb most affected by this application, is significant, anything other than a small increase in harm and ill-health from the grant of the application, without unambiguous and meaningful benefits to the community would, in the Commission's view, be unacceptable.
- 135 The Commission considers that there is a likelihood that there will be an increase in the level of harm and ill-health but that this will not be of such a degree that the granting of the application would be rejected solely on that finding.

Assessment of likely increase in harm against benefits of granting the application

- 136 As indicated above, the applicant has contended that any potential risk of alcohol related harm to some groups must be balanced with the interests of a significant portion of the community who will benefit from increased competition, having greater choice and range, and shopping for alcohol in a pleasant and non-threatening environments.
- 137 Many of the applicant's submissions highlight the benefits of the proposal, but the most comprehensive account is probably set out in the Social Impacts Strategies Report which can be summarised as follows:

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<sup>6</sup> [2013] WASC 51

## Liquor Industry

- a) The changing demographics of the Rockingham LGA, in particular young industry professionals, require a more “upmarket” range of products and services and there is still a previously common perception that the hotel is “a bit bogan” – the upgrade and redevelopment would address this issue;
- b) The inclusion of a Dan Murphy’s store would bring a broader range of people to the venue because of the range of products including very high end wines and spirits, thus broadening the customer base;
- c) The Community Survey demonstrated that respondents regard the totality of the renovations will transform the venue to a more amenable facility, more suited to families;
- d) Aspects of the various facilities within the hotel lack operational functionality which impacts on the level of enjoyment, service and convenience experienced by customers – these deficiencies will be rectified by the refurbishment;
- e) The existing BWS store is too small and is over trading, and the Dan Murphy’s model has been popular elsewhere and would represent a significant new development in the liquor industry in the locality.

## Tourism Industry

- a) The City of Rockingham has taken steps to raise the profile of Rockingham and encourage development to attract visitors and tourists to the area, and while the Leisure Inn could not be described as a tourist attraction, it is a potential destination where various needs of tourists can be met, including dining, entertainment and spending time in a pleasant environment;
- b) The connection of the Dan Murphy’s store to the Leisure Inn accommodation will provide added convenience for guests staying at the Inn;
- c) The proposal will result in a major investment in the City Centre consistent with the City’s Strategic Community Plan.

## Entertainment Industry

- a) The upgrade increases the range of day and night time activities and the activation of the Chalgrove Avenue frontage will also contribute to the liveliness of the area;
- b) While mainstream entertainment and stage acts will continue, more functions will be accommodated, all of which provides an important entertainment venue for the City.

## Employment

- a) The redevelopment will generate employment during the building phase and, once developed, employment in the sale of packaged liquor will increase substantially.

## Other benefits

- a) The Leisure Inn is highly regarded as a community meeting place for people over the Rockingham/Kwinana area, a feature that will be enhanced with the redevelopment;
- b) The premises are the only hotel that has the capability of providing the facilities and services of a Full Services Hotel;
- c) There will be adverse social impacts if the redevelopment is not undertaken.

138 Most of these benefits are associated with the upgrade of the hotel's internal food and beverage facilities, and while the upgrade of those facilities is certainly beneficial and an improvement over the products and services presently provided they do not change the fundamental nature of the premises, as does the proposed Dan Murphy's store.

139 It is important to note that this application cannot be viewed in a piecemeal manner. The Commission is required to consider all of the benefits that may arise from the totality of what is planned by the applicant. The development of the premises relating to food and beverage facilities will no doubt provide the benefits that are referred to by the applicant. The development of the Dan Murphy's store will also provide the types of benefits that have previously been referred to by the Commission in similar applications. The totality of these benefits must then be weighed against the harm and ill-health issues that have already been referred to. Other factors that lend support to the application include:

- a) the investment of \$6.5 million in the City of Rockingham which may, notwithstanding the absence of any direct evidence of economic flow on benefits, contribute to the further development of the commercial precinct within which the premises are located;
- b) whilst the Dan Murphy's store is a destination liquor outlet, a proportion of customers from outside the immediate area may shop elsewhere to the benefit of other businesses in the commercial precinct; and
- c) although the frequency of use is not clear, the staff training facility may add some additional vitality to the precinct.

## Determination

140 Based on the totality of the evidence submitted by all parties to the application, the Commission makes the following findings:

- a) the risk of an increase in alcohol related harm and ill-health, and the likely resultant magnitude of that harm and ill-health due to the proposed introduction of the Dan Murphy's store, over and above the alcohol related harm which is occurring in the community currently (due to the existing licensed premises, including the applicant's BWS store) is not insignificant;
- b) however, there are some potential mitigating factors:
  - notwithstanding the increase in the economic availability of alcohol and its likely consequences, the Dan Murphy's store is replacing an existing BWS store;
  - the level of disadvantage in the community is, at least to some extent, a product of the age demographic with a high proportion of older people in the community, and blue collar occupations which tend to reflect lower educational status (a factor used in assessing levels of relative disadvantage);
  - whilst income levels in the suburb of Rockingham are low compared to the State average, housing stress and rental assistance appear relatively low;
  - despite a high rate of domestic and family violence in the past (the City's Health and Wellbeing Plan 2007-2011 noted a high prevalence in 2004), in more recent years, the level of domestic violence has been lower than the State rate;
  - although the incidence of alcohol liver cirrhosis for females in Rockingham is significantly higher than the State rate and, therefore, concerning, the overall rate of alcohol related hospitalisations for all alcohol related conditions for males and females is lower than the State rate;
  - the premises are in a commercial precinct in a developing regional City centre of considerable size with limited physical exposure to the premises of organisations providing services to "at risk" groups;
  - the exposure of the proposed Dan Murphy's store to school children is relatively limited and the risk of school children "hanging around" the store is low; and



- although the applicant has responded in general terms to the recommendations in the Social Impact Strategies Report to mitigate against the potential for an increase in harm, the applicant has indicated a willingness to adopt this course - it is noted that some of the mitigation measures are similar to a previous commitment provided by the applicant in the Maylands decision (see para [53] of the majority decision).
- c) whilst the applicant has not clearly demonstrated that the proposed Dan Murphy's store is responding to the preferences or requirements of consumers of liquor in the local community (given the ambiguity surrounding the results of the Community Survey), the high level of support for the upgrade of other facilities and the facilities overall is a relevant consideration;
- d) although the extent of an upgrade to the accommodation component of the proposed upgrade has not been made clear, the tenor of the application is such that an upgrade in keeping with the redevelopment of the other facilities is expected; and
- e) the benefits to be derived by the City of Rockingham and the local community in the form of employment, a staff training facility and the proposed \$6.5 million investment are also relevant considerations.

141 Although finely balanced, having considered the potential benefits of the proposed development as a whole, the Commission has determined that the likely increase in harm and ill-health that may result from the grant of the application is not so unacceptable as to outweigh the potential benefits to the City of Rockingham and the local community.

142 Based on an assessment of all of the evidence relied upon by the parties (including materials not referred to specifically in these reasons), the Commission is satisfied that the applicant has discharged its onus and established on balance that it is in the public interest to allow the application and that the objectors have failed to establish that the granting of the licence would not be in the public interest.

143 Accordingly, the Commission would grant the application subject to standard conditions imposed by the Director.




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**SEAMUS RAFFERTY**  
**CHAIRPERSON**