

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** ENDEAVOUR GROUP LIMITED  
(Represented by Cullen Macleod)

**OTHER PARTIES:** RAELYN PUNCH AND DAVID WILLIAMS ON BEHALF OF  
THE SOUTH MANDURAH UNITING CHURCH  
(First Objector)

ADAM RILEY  
(Second Objector)

**PREMISES:** *BWS - BEER WINE SPIRITS FALCON*  
MIAMI PLAZA SHOPPING CENTRE, 3 OLIVE ROAD,  
FALCON

**APPLICATION REF:** A247945243

**NATURE OF APPLICATION:** **CONDITIONAL GRANT OF A LIQUOR STORE LICENCE**

**DECISION OF:** BRETT SNELL  
DEPUTY DIRECTOR LIQUOR CONTROL & ARBITRATION

**DATE OF DETERMINATION:** 12 MARCH 2021

---

### **Decision**

1. By application lodged on 25 August 2020, Endeavour Group Limited (Applicant) sought the conditional grant of a liquor store licence, pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (Act), for premises to be known as *BWS - Beer Wine Spirits Falcon* and situated at Miami Plaza Shopping Centre, 3 Olive Road, Falcon (proposed premises).
2. The application was advertised in accordance with instructions issued by the Director of Liquor Licensing (Director), which resulted in notices of objection being lodged by:
  - (a) Raelyn Punch and David Williams, on behalf of the South Mandurah Uniting Church (First Objector); and
  - (b) Adam Riley (Second Objector).
3. Pursuant to ss 16(1)(b) and 69 of the Act, a report was requested from the Chief Health Officer (CHO) and Commissioner of Police on health and crime data for the locality. On 3 November 2020, the CHO provided a report on health data for the locality<sup>1</sup>, a copy of which was provided to the Applicant. No report was provided by the Commissioner of Police.

---

<sup>1</sup> A 3 km radius of the proposed premises was adopted by the Applicant as the locality for the purposes of the tests in ss 36B(4) and 38(2) of the Act, with the following suburbs identified as falling, either wholly or in part, within the locality:

- (a) Falcon;
- (b) Dawesville;
- (c) Wannanup; and
- (d) Bouvard.

*BWS - Beer Wine Spirits Falcon*

4. Pursuant to ss 13 and 16 of the Act, I have decided to determine the application on the written submissions of the parties. After considering the application, the report of the CHO, the notices of objection and other submissions of the parties, including any evidence and/or submissions that have not been specifically referenced in the following reasons, I have determined, pursuant to my delegation under s 15 of the Act, to refuse the application on the basis that the Applicant failed to discharge its separate onuses under ss 36B(4) and 38(2) of the Act.
5. Should any party to these proceedings be dissatisfied with the outcome, a review of the decision may be sought under s 25 of the Act. The application for review must be lodged with the Liquor Commission (Commission) within one month after the day upon which the parties received notice of this decision.
6. The reasons for my decision follow.

**Reasons for Decision**

***The application***

7. The Applicant sought the conditional grant of a liquor store licence for the proposed premises, which is presently a vacant tenancy located next to an existing *Woolworths Supermarket* (Supermarket) in the *Miami Plaza Shopping Centre* (Centre), at 3 Olive Road, Falcon. According to the Applicant, the Centre is an established shopping centre designed to cater for local community needs and catering, on average, to between 1 to 1.5 million people per annum.
8. The Applicant submitted that the proposed premises will provide complementary and ancillary services to the existing Supermarket at the Centre, which serves 962,000 people per annum and therefore the grant of the application would provide these customers, and other customers of the Centre, with the amenity and convenience of buying packaged liquor at the same time as doing grocery and other shopping.
9. To support the application, the Applicant lodged a *Public Interest Assessment* (PIA); which was informed, amongst other things, by the following reports:
  - (a) *MGA Town Planning Report*, dated June 2020 (*MGA report*);
  - (b) *Caporn Services Public Interest Environmental and Health Assessment Report*, dated 17 June 2020 (*Caporn report*);
  - (c) *Market Survey Report* prepared by Painted Dog Research, dated April 2020 (*Market Survey*), which consisted of an on-line survey of residents of the locality and an intercept survey of customers at the Centre; and
  - (d) *Health and Crime Statistics Report* by Pdraig McCloskey, dated May 2020 (*Health and Crime report*).

*BWS - Beer Wine Spirits Falcon*

10. By way of its PIA, the Applicant explained that the premises would:
- (a) feature a trading area of approximately 164m<sup>2</sup> (including a display trading floor area and a walk-in cool room of 38m<sup>2</sup>);
  - (b) present as a modern, browse-style liquor store, operated under the Applicant's *BWS-Beer Wine Spirits* brand, with a focus on providing convenience retail packaged liquor services and facilities; and
  - (c) would have a large, diverse and quality product range of approximately 1,671 products.
11. The Applicant also submitted that the introduction of the proposed store at the Centre would introduce diversity, choice and competition in retail packaged liquor services in the locality, stating that:
- 'It is reasonable, and in the proper development of the liquor industry, for a convenience retail packaged liquor store to be located at the Centre, due to its size and prominence. The sheer volume of visitors to the Centre and the Woolworths Supermarket, to which the Proposed Store will provide complementary and ancillary services, is in itself, sufficient reason to support the grant of the application.'*
12. The Applicant also submitted that it is clear from the results of the *Market Survey*, as well as statements from its key personnel and its own research into the requirements of Australian consumers for packaged liquor, that:
- (a) modern consumers in Australia demand, and expect, range, choice and diversity in consumer goods, including retail packaged liquor;
  - (b) 'being located next to the Woolworths Supermarket where you can also do your shopping' and 'being able to do grocery shopping at the same time/doing it all in the one trip' are two of the three top ranked answers given by respondents; and
  - (c) 'convenience' was the overwhelmingly reason given as to why respondents would use the proposed store.
13. The Applicant acknowledged a previous application by Woolworths Group Limited for the grant of a liquor store licence at the same proposed premises in 2015, which was refused by both the Director on 19 July 2016<sup>2</sup> and the Commission on 23 December 2016<sup>3</sup> on public interest grounds. While acknowledging that 'many aspects of the Application are the same as the previous', the Applicant highlighted some key differences, such as:
- (a) many aspects of the previous application focused only on the suburb of Falcon, whereas the present application addresses the whole of the locality; and
  - (b) growth in the local population has occurred, with significant continued growth anticipated.

---

<sup>2</sup> Decision of Director of Liquor Licensing *Re: BWS - Beer Wine Spirits Falcon* (Application Ref: A000190986)

<sup>3</sup> *Woolworths Ltd v Director of Liquor Licensing & Others* [LC 23/2016]

*BWS - Beer Wine Spirits Falcon*

14. The Applicant also submitted that while it has been identified that the locality suffers from alcohol-related harm or ill-health:
  - (a) there is no evidence that this level is significantly greater than the WA baseline levels; and
  - (b) there is no evidence of any particular demographic, person or “at risk group” in the locality.
15. In its submissions addressing the provisions of s 36B(4) of the Act, the Applicant outlined that there are currently five packaged liquor premises within the locality that can sell packaged liquor to the public, being:
  - (a) *Cobbler’s Tavern*;
  - (b) *First Choice Liquor Market*;
  - (c) *Cellarbrations Port Bouvard*;
  - (d) *Cellarbrations Dawesville*; and
  - (e) *Thirsty Camel Bouvard*.
16. However, *Cobbler’s Tavern* was excluded from the Applicant’s analysis of the extent to which the requirements of consumers for packaged liquor in the locality are currently being met by existing packaged liquor outlets, on the basis that the premises does not have a dedicated liquor store area or promote the sale of packaged liquor. Further, the Applicant also acknowledged while it is clear that some of the other existing packaged liquor outlets in the locality can meet one or more of the key requirements of consumers, none could meet all of them, such as the requirement for one stop shopping of grocery and liquor.
17. In this regard, the Applicant submitted that the top five key requirements of consumers were:
  - (a) competitive pricing and weekly specials;
  - (b) being located next to the Supermarket where they also do their supermarket shopping;
  - (c) being able to do grocery shopping at the same time / doing it all in the one trip;
  - (d) the ability to use store loyalty cards / rewards programs; and
  - (e) being located in the Centre.
18. Accordingly, the Applicant submitted that:

*‘Having a liquor store at the Centre is a key requirement of local packaged liquor consumers in the Locality. Currently there is none. While the First Choice Liquor Market liquor store is located within close proximity to the Centre, it is not in the Centre, and requires a separate trip and shopping transaction. The simple fact that the First Choice Liquor Market store is not physically at the Centre means it does not meet the requirement for packaged*

*BWS - Beer Wine Spirits Falcon*

*liquor consumers for a packaged liquor outlet to be located there. Nor does the First Choice Liquor Market store provide the amenity of one stop shopping for groceries and liquor.'*

**The objections**

19. The objection by Raelyn Punch and David Williams, on behalf of the South Mandurah Uniting Church (First Objector), was made on the grounds permitted by:
  - (a) s 74(1)(a) of the Act, that the grant of the application would not be in the public interest; and
  - (b) s 74(1)(b) of the Act, that 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.
20. Reasons given in support of the objection included that:
  - (a) there are too many liquor outlets within the community and no valid reason to increase that number;
  - (b) there would be little benefit to the local community, particularly given that:
    - (i) the proposed premises would be operated by a large corporate entity, with profits from the business being diverted away from the locality; and
    - (ii) market domination by large corporate entities results in less independent packaged liquor outlets;
  - (c) there is a direct correlation between low prices of liquor, increased competition and increased alcohol-related harm; and
  - (d) there are negative social consequences associated with increased alcohol consumption for the community, which will be exacerbated by the granting of an additional liquor licence in the locality.
21. The objection by Adam Riley (Second Objector) was made on the grounds permitted by:
  - (a) s 74(1)(a) of the Act, on the basis that Falcon is a domestic violence hotspot which has worsened since the previous application by Woolworths Group Limited was refused in 2016;
  - (b) s 74(1)(b), given that there are members of the public who specifically frequent the Centre because there is no liquor store there;
  - (c) s 74(1)(g)(i), that the grant of the application would be likely to result in undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity; due to the rise in shoplifting associated with the Applicant's policy of not confronting shoplifters and allowing them to walk out of their stores; and
  - (d) s 74(1)(g)(ii), that the grant of the application would in some way lessen the amenity, quiet and good order of the locality in which the premises are situated, given that homeless people already wait in front of licensed premises for them to open.

*BWS - Beer Wine Spirits Falcon*

22. The Second Objector also asserted that Falcon is well known to have ‘crime and alcohol-related problems’ and given the nature and number of existing licensed premises in the locality, the proposed premises is ‘just not needed’.

**Determination**

23. For the purposes of the licence sought, the Applicant must satisfy the licensing authority:
- (a) first, that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality; and
  - (b) secondly, that the granting of the application is in the public interest.
24. Similarly, the burden of establishing the validity of any ground of objection lies on the objectors (s 73(10)).

***Local packaged liquor requirements***

25. An applicant for the grant of one of the licence types prescribed in s 36B(2) of the Act, which includes a liquor store licence, bears the onus of satisfying the licensing authority, pursuant to s 36B(4), that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality. In relation to these obligations, the Commission held in ***Lolba Holdings Pty Ltd v Director of Liquor Licensing***<sup>4</sup> (*Lolba*) that:
- (a) it is clear from both the Explanatory Memorandum and Second Reading Speech<sup>5</sup> associated with the proclamation of the *Liquor Control Amendment Act 2018*, that the Government sought to insert the provisions of s 36B into the Act to stop the further proliferation of packaged liquor outlets across the State;
  - (b) section 36B(1) defines ‘local packaged liquor requirements’ as ‘the requirements of consumers for packaged liquor in the locality in which the proposed licensed premises are, or are to be, situated’; and
  - (c) to discharge an applicant’s onus under s 36B(4), the licensing authority must be satisfied, on the evidence provided, that:
    - (i) there is a ‘local packaged liquor requirement’ - being the requirements of consumers for packaged liquor in the locality the premises are to be situated; and
    - (ii) such ‘local packaged liquor requirements’ cannot reasonably be met by existing packaged liquor premises in the locality.
26. In this context, the word ‘reasonably’ invokes a fairly low threshold, as noted by the Court of Appeal (Court) in ***Charlie Carter Pty Ltd v Streeter and Male Pty Ltd***<sup>6</sup>:

---

<sup>4</sup> 13 January 2021 (LC 01/2021)

<sup>5</sup> Western Australia, Parliamentary Debates, Legislative Assembly, 20 February 2018, 325 (Mr Paul Papalia, Minister for Racing and Gaming)

<sup>6</sup> (1991) 4 WAR 1

*BWS - Beer Wine Spirits Falcon*

*‘The word “reasonable” imports a degree of objectivity in that the word reasonable means “...sensible; ...not irrational, absurd or ridiculous; not going beyond the limit assigned by reason; not extravagant or excessive; moderate”: Shorter Oxford Dictionary at 1667.’*

27. The Commission also observed that:

- (a) the established issues of convenience, one-stop shopping, and shopping preferences, are matters which form part of the public interest considerations under s 38(2); and
- (b) section 36B(4) is drafted much more narrowly, with the provision being clearly aimed only at ‘packaged liquor’ and not including other services or benefits.

28. Importantly, the Commission found that:

*“local packaged liquor requirements” is to be narrowly construed and would not include those matters typically contemplated under section 38 such as contemporary standards in retailing or shopper convenience, preference or habits, one-stop shopping, easy access by motor vehicle or product choice and preference.’*

29. In my view, the Commission’s construction of s 36B in **Lolba** effectively renders the Applicant’s conclusions about residents of the locality having key packaged liquor requirements for:

- (a) the ability to purchase packaged liquor at the same time as doing their grocery shopping;
- (b) a liquor store being located at the Centre; and
- (c) competitive prices and weekly specials,

as irrelevant to the central issue under s 36B(4), i.e. reasonable access to packaged liquor or a kind of packaged liquor. In this regard, I note that there has been no evidence lead by the Applicant regarding a consumer requirement for packaged liquor or a kind of packaged liquor to be offered at the proposed premises, notwithstanding that some consumers expressed a preference for the BWS brand.

30. Similarly, I consider that the Applicant’s consideration of the extent to which the requirements of consumers for packaged liquor in the locality are being met by existing outlets, was likewise centred on convenience and one-stop shopping, rather than the exact nature of the packaged liquor products that are genuinely ‘required’ by consumers in the locality.

31. In relation to *Dawesville Cellarbrations*, which is the only packaged liquor premises in the locality identified by the Applicant as providing for one stop shopping, it was submitted that this benefit is limited by the facts that:

- (a) the store is located in a neighbourhood centre, which is only designed to service, and is only convenient to, residents in the suburb of Dawesville; and

*BWS - Beer Wine Spirits Falcon*

- (b) that the IGA supermarket is only a small supermarket and therefore does not offer full-scale grocery services and facilities.

32. Further, in relation to *First Choice Liquor Market*, I note that the *MGA report* observed that that this liquor store:

*'has a floor area of approximately 800m<sup>2</sup> net lettable area, including a cool room being 40m<sup>2</sup> and the shop floor contains double sided shelving predominantly holding non – chilled wine and some craft beers. 15 fridges line the walls, including 2 double door fridges containing soft drinks, 11 single door fridges containing chilled wines, and 2 open – style fridges containing pre – mixed drinks. The majority of stock is focused on wine.*

*The First Choice Liquor Market services a broad catchment taking in the entire locality area, and suburbs to the north of the locality. Customers will travel some distance to visit the store for the sole purpose of purchasing packaged liquor in view of the range and depth of stock, aligning with its location within the only district activity centre in the locality.*

*The store is located 150m north of the shopping centre building and approximately 170m north of the supermarket from inside the shopping centre. In contrast, the proposed BWS store is adjacent to the supermarket. Moving a trolley or visiting the First Choice Liquor Market store on foot from the shopping centre is unattractive and unsafe due to vehicle movements within the large shopping centre car park and Olive Road, which separate the store from the shopping centre. The vast majority of customers visiting the store are therefore most likely to make a separate vehicle trip before or after visiting the supermarket.'*

- 33. While I accept that there is no packaged liquor outlet within the Centre that is able to provide for one-stop shopping and other convenience, as noted by the Commission in ***Lolba***, this is not relevant to the test under s 34B(4), which is strictly limited to the consideration of whether packaged liquor requirements are met in the particular locality of the proposed premises. Further, as part of its determination of the previous application, I also note the Commission's conclusion that 'the potential benefit to the public through the added convenience of one-stop shopping is greatly diminished' by the close proximity of the existing packaged liquor outlets (i.e. *First Choice Liquor Market*).
- 34. The evidentiary onus is on the Applicant to satisfy the licensing authority as to the test set out in s 36B(4). The evidence provided by the Applicant must be 'relevant, reliable, and logically probative to assist the decision maker in assessing the probability of the existence of the facts asserted in each case'.<sup>7</sup> In my view, the Applicant's evidence is lacking. In forming this view, I have noted the findings of the Market Survey:
  - (a) where 'two thirds of residents agree that the three existing liquor stores in their local area meet their overall liquor purchasing needs in terms of providing greater choice (68%) and competition (67%)'; and

---

<sup>7</sup> *Busswater Pty Ltd v Director of Liquor Licensing* (LC 17/2010)



*BWS - Beer Wine Spirits Falcon*

- (b) of 'the Miami Plaza visitors intercepted, 1 in 5 had or planned to purchase takeaway liquor that day and 4 in 5 planned to purchase from First Choice Liquor.' In my view, this observation is relevant given that, according to the Applicant, *First Choice Liquor Market* is located approximately 150 m away or 'a walk of 178 steps from the north entry to the Centre.'

- 35. Following the enactment of s 36B of the Act, I do not accept the Applicant's submission that the grant of the application would facilitate the proper development of the liquor industry, particularly when regard is had to the Government's reasons for the insertion of s 36B (refer paragraph 25 (above)).
- 36. Given the above, I find that the evidence provided does not sufficiently support a finding that the local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality and I would refuse the application on this ground.

**Public Interest**

- 37. Although I have effectively disposed of the application on the basis of my findings in respect to the Applicant's onus under s 36B(4) of the Act, in this instance, I also consider it is relevant to examine the broader public interest factors associated with the application.
- 38. When determining whether an application is 'in the public interest', the licensing authority must take into account:
  - (a) the primary objects of the Act, as set out in s 5(1), which are:
    - (i) to regulate the sale, supply and consumption of liquor; and
    - (ii) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
    - (iii) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State; and
  - (b) the following secondary objects of the Act, as set out in s 5(2):
    - (i) to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
    - (ii) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
    - (iii) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 39. Further s 38(4) provides the matters the licensing authority may have regard to in determining whether granting an application is in the public interest, which include:

*BWS - Beer Wine Spirits Falcon*

- (a) the harm or ill health that might be caused to people, 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, or are to be, situated;
  - (c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
  - (d) any other prescribed matter (albeit that no 'other ... matter' has yet been prescribed).
40. In ***Woolworths v Director of Liquor Licensing***<sup>8</sup> (***Woolworths***), the Court provided guidance as to how the licensing authority should discharge its role of determining whether an application is in the public interest, with the Court holding that the licensing authority:
- (a) is obliged to evaluate the evidence, make findings and draw conclusions from the evidence;
  - (b) is bound to have regard to the factual matters (the evidence, factual findings and conclusions reached) relevant to the objects of the Act, as set out in section 5; and
  - (c) may have regard to factual matters (the evidence, factual findings and conclusions reached) relevant to the matters set out in section 38(4).
41. In ***Executive Director of Health v Lily Creek International Pty Ltd***<sup>9</sup> (***Lily Creek***), the Court made the following observations as to the determination of whether an application is in the public interest, where alcohol-related harm or ill-health is a consideration:

*'It follows that the mere fact that s 5(1)(b) is a primary object does not necessarily mean that where harm or ill-health may be caused to people by the grant of a licence, no licence should be granted. Where there is a prospect of harm or ill-health being caused by the grant of a licence, and that grant will advance s 5(2) objects, the resolution of the conflict that then arises will depend on the degree of importance that is to be attributed to each of the relevant factors in the particular circumstances (bearing in mind that the object under s 5(1)(b) is to be accorded primacy).*

*The Licensing Authority may decide that the possibility of harm or ill-health is so remote or so insignificant that it should not be taken into account. It may be that a possibility of harm or ill-health of a particular serious nature will be sufficient to cause the Licensing Authority to impose stringent conditions on a licence or refuse the grant absolutely. The decision in each case will depend on the particular circumstances.'*

---

<sup>8</sup> [2013] WASCA 227

<sup>9</sup> [2000] WASCA 258; (2000) 22 WAR 510

*BWS - Beer Wine Spirits Falcon*

42. Further guidance was provided in ***Carnegies Reality Pty Ltd v Director of Liquor Licensing***<sup>10</sup> (***Carnegies***), where the Court observed that the licensing authority should undertake the following steps when addressing questions of alcohol-related harm and ill-health:
- (a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
  - (b) make findings about the likely degree of harm to result from the grant of the application;
  - (c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
  - (d) weigh the likely degree of harm, so assessed, together with any other relevant factors to determine whether an applicant has satisfied the Commission that it is in the public interest to grant the application.
43. The Applicant bears the onus of demonstrating that the conditional grant of the liquor store licence is in the public interest (refer ***Liquorland (Australia) Pty Ltd v Executive Director of Health***<sup>11</sup>; ***Seoul Mart City Pty Ltd v Commissioner of Police***<sup>12</sup>).
44. In my view, the starting point for any consideration of the public interest in the locality, in this matter, should have commenced with an acknowledgement that the licensing authority has already found that:
- (a) it was not in the public interest to grant the application in 2016, 'due to the existing level of alcohol-related harm and ill-health' in the locality; and
  - (b) 'the potential for an increase in that harm and ill-health' associated with the establishment of a liquor store at the Centre,
- and a demonstration that the circumstances of the locality have materially changed since then.
45. However, the Applicant simply asserted that 'there is nothing to suggest the population of the locality is any different to any other urban area in the Perth Metropolitan Area' and, based on the demographic study in its PIA, submitted that:
- (a) 'the majority of the locality is... comprised of established residential areas, which will continue to experience new residential infill development ...';
  - (b) the estimated population of the locality in 2020 is 17,298 people, which has increased from 14,987 people in 2016; and
  - (c) identified that the population:
    - (i) is relatively aged;

---

<sup>10</sup> [2015] WASC 208

<sup>11</sup> [2013] WASC 51

<sup>12</sup> LC 27/2014

*BWS - Beer Wine Spirits Falcon*

- (ii) is largely Anglo-Saxon;
  - (iii) has a low proportion of Indigenous persons;
  - (iv) is predominantly comprised of couples with no children;
  - (v) earns less at both an individual and household level; and
  - (vi) has a higher level of home ownership.
46. The Applicant also noted that the suburbs of Wannanup and Dawesville, where 63.1% of the locality's population reside, achieved a rating of five and four on the on the Western Australian SEIFA Decile (out of a possible ten, with one representing the most disadvantaged communities), with Falcon and Bouvard each having a ranking of two and three respectively, indicating a slightly lower level of advantage.
47. In relation to unemployment figures, the Applicant referenced labour force data released by the Department of Employment in April 2020, which revealed that unemployment throughout the:
- (a) State, was approximately 6.1%; and
  - (b) City of Mandurah LGA area, was 6.7%,
- indicating that the rate of unemployment in the locality was likely lower in April than recorded in 2016.
48. The report of the CHO provided the following information:
- (a) based on the 2016 Census statistics, that unemployment rates in:
    - (i) Falcon, is 11.6%;
    - (ii) Dawesville, is 10.3%;
    - (iii) Wannanup, is 8.8%; and
    - (iv) Bouvard, is 12.1%,which are significantly higher than the State rate of 7.8%;
  - (b) Falcon remains statistically disadvantaged on the SEIFA indices;
  - (c) for the period January 2013 and September 2020, there were:
    - (i) 750 treatment episodes for residents in the locality (compared to 172 in 2016) in alcohol/drug agencies funded by the Mental Health Commission, of which 34% involved alcohol as the primary drug concerned (compared to 24% in 2016) and where alcohol was identified as a drug of concern in 55% of all treatment episodes (compared to 52% in 2016); and
    - (ii) 310 treatment episodes for residents of Falcon itself, of which 33% involved alcohol as the primary drug concerned, with alcohol being identified as a drug of concern in 59% of all treatment episodes; and

*BWS - Beer Wine Spirits Falcon*

- (d) between 2017 and 2019, respondents aged 16 years and over in the Peel region self-reported consuming alcohol at risk levels for long-term harm (32.4%) and short-term harm (12%), which were both higher than the corresponding State rates of 26.3% and 11.1%, respectively.
49. The report of the CHO also observed that there is a relationship between alcohol and mental health, stating that:
- (a) between 2017 and 2019, people aged 16 years and over in the Peel region reported high levels of psychological distress (10.7%), which were higher than the State levels (8.5%);
  - (b) alcohol plays a complex role in the development and progression of mental health outcomes and alcohol use elevates the risk of a number of mental health problems;
  - (c) people with, or at-risk of, a mental health condition are more likely to use alcohol than those without, and may have worse symptoms after drinking; and
  - (d) there is a comorbid relationship between alcohol use and mental health issues, such as depression and anxiety, which, based on a study by Mann *et al*<sup>13</sup>, can be best summarised as:  
  

*'Individuals experiencing clinically significant alcohol problems are frequently observed to be experiencing depression and anxiety, and similarly people experiencing clinically significant depression and anxiety are frequently observed to be experiencing alcohol problems.'*
50. The CHO's report also noted the Applicant's comments in the PIA that '98% of residents of the locality do their shopping at the Supermarket' and a 'number of people outside the Locality also visit the Supermarket to complete their grocery shopping', before observing that, given 'its proximity to the Woolworths supermarket, and the number of people that attend the supermarket for daily needs, the opportunistic access to liquor at BWS Falcon may increase the risk of harm to vulnerable members in the locality.'
51. The CHO also reported that the following two characteristics of the store may increase the potential for harm:
- (a) first, the nature of harm that occurs in association with packaged liquor is a relevant consideration, with such harms including an adverse impact on vulnerable members of the broader community, arising from domestic and family violence, assaultive violence, child maltreatment, vehicle accidents and injuries among young adults; and
  - (b) secondly, the sale of alcohol is price responsive, that is, a reduction in price can result in an increase in consumption and vice versa and the Applicant proposes competitive prices, together with the convenient location of the proposed premises.

---

<sup>13</sup> Referenced in the CHO's report as Mann, R., Ialomiteanu, A.R., Chan, V. ... &Rehm, J. (2021) 'Relationships of alcohol use and alcohol problems to probable anxiety and mood disorder.' *Contemporary Drug Problems*, 39, 247 – 263. P. 248

*BWS - Beer Wine Spirits Falcon*

52. Although I note the Applicant's submissions that:

- (a) when a new liquor store opens in an area where there are existing outlets and liquor is already readily obtainable, consumers adjust their buying habits rather than buy more, i.e. they merely shift where they buy their liquor;
- (b) the majority of liquor products at the proposed premises will cost \$15 or more, which is more expensive than the *First Choice Liquor Market* in Falcon (being the current and only liquor store in the Miami Plaza District Activity Centre); and
- (c) prices at the proposed premises will be the same as at any other BWS store in Mandurah,

it cannot be denied that the Applicant is seeking to increase the availability of packaged liquor in the locality, which already has numerous existing packaged liquor outlets.

53. Further, when considering the SEIFA index findings, unemployment levels and low weekly incomes, the Applicant submitted that an important consideration is the number of aged persons in the locality and observed that while the suburbs of Falcon and Bouvard recorded the highest unemployment rates and lowest median weekly incomes out of all the suburbs in the locality, these two suburbs also:

- (a) have the highest proportion of persons aged 60 years of age or above (31.2% in Falcon and 38.3% in Bouvard); and
- (b) have the highest proportion of fully owned housing (38.8% in Falcon and 46.2% in Bouvard),

which help to explain the results.

54. In relation the SEIFA index, the Applicant also submitted that it is important to note that income is the strongest indicator of both disadvantage and advantage and it therefore follows that in an area where there are a large number of retirees who generally have more limited incomes, that the index results will be skewed by this factor alone.

55. Conversely, the report of the CHO observed that regardless of the proportion of people aged 60 years in the locality, it remains that there is a higher proportion of unemployed persons and those earning low weekly incomes in the locality, in comparison to the State average.

56. I have also noted that in 2016, after acknowledging that a higher proportion of older people reside in Falcon than the State average, the Commission observed that it was speculative to suggest that the number of retirees gave rise to higher levels of unemployment.

57. Therefore, despite the Applicant's assertions that the likely degree of harm that would result from the grant of the application would be low, it is my view that the report provided by the CHO clearly demonstrates that the locality is presently more disadvantaged than when the previous application was refused, given:

*BWS - Beer Wine Spirits Falcon*

- (a) the lower SEIFA rating for Falcon presently than in 2016;
  - (b) higher levels of treatment episodes in alcohol/drug agencies funded by the Mental Health Commission for residents in the locality and in Falcon itself;
  - (c) the self-reporting of alcohol consumption at risk levels for both long-term and short-term harm in the Peel region; and
  - (d) the levels of psychological distress in the Peel region, which is relevant given the comorbid relationship between alcohol use and mental health issues.
58. Having regard to ss 5(1)(c) and 5(2)(a) of the Act and the Applicant's submissions, the primary benefits of the application appear to be:
- (a) the convenience of one stop liquor and grocery shopping; and
  - (b) increased competition and consumer choice and the facilitation of the development of the liquor industry.
59. In respect of the previous application, I note that the Commission observed that in relation to convenience, that it had already commented in ***Liquorland (Australia) Pty Ltd v Commissioner of Police & Others***<sup>14</sup> that:

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

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

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

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

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

---

<sup>14</sup> LC 18/2015

*BWS - Beer Wine Spirits Falcon*

60. Similarly, in respect of the previous application, the Commission also observed that:

*'...there is no evidence to suggest that the First Choice liquor store adjacent to the Centre will not continue to meet the expectations and requirements of consumers shopping for liquor in that location.*

*Regional shopping centres take all forms, shapes and configurations and the Court of Appeal in the Bicton decision was not suggesting that customers expect to be able to shop for all their requirements under the one roof using the same trolley, as the applicant seems to be suggesting.*

*Indeed, the Dan Murphy's liquor store the subject of the Bicton decision, is a separate standalone building, much the same as the First Choice store in Falcon, separated from a selection of retail outlets, including a large Coles supermarket, in a shopping centre some distance away across a car park.'*

61. In determining whether granting of an application is in the public interest, the licensing authority must consider the existing level of harm or ill-health due to the use of liquor in the locality in which the premises is to operate.
62. In this regard, the Act does not envisage that the grant of an application should not result in any increase in harm or ill-health in a locality, but rather recognises that while an application might result in some harm and ill-health, the benefits to consumers and the liquor, tourism and hospitality industries, and hence the community, may outweigh the potential for an increase in harm and ill-health.
63. In ***Liquorland (Australia) Pty Ltd v Commissioner of Police***<sup>15</sup>, the Commission relevantly commented:

*'A measured approach requires a careful consideration of the broader public interest and simply because a service is convenient or more convenient than that currently available does not itself satisfy the primary and secondary objects or the public interest as specified in the Act. A liquor outlet...beside every supermarket to satisfy the convenience of some members of the public...would not be...in accordance with the provisions and intent of the Act.'*

64. On the basis of the evidence before me, I find that there is a high level of existing alcohol-related harm and ill-health in the locality of the proposed premises, due to the use of liquor.
65. Following the steps laid out in ***Carnegies*** (refer paragraph 42 (above)), I must now determine whether the grant of the application is reasonably likely to result in increased harm or ill-health to people, or any group of people, in the locality due to the use of alcohol.
66. As discussed earlier, there are already five existing packaged liquor premises in the locality, with two of them located within 150m of the shopping centre of the proposed premises (i.e. *Cobbler's Tavern* and *First Choice Liquor Market*). Notwithstanding the

---

<sup>15</sup> LC 18/2015



*BWS - Beer Wine Spirits Falcon*

Applicant's discounting of the *Cobbler's Tavern*, I note that the premises operates under a tavern licence and would therefore be authorised to sell packaged liquor. Accordingly, I consider the Applicant's analysis of the *Cobbler's Tavern* fails to categorically establish whether or not the premises actually sells packaged liquor (to meet the requirements of its customers for the sale of packaged liquor in the locality), regardless of the quantities of packaged liquor sold there or whether the sale takes place over the bar. The fact that the hotel or tavern does not have a dedicated packaged liquor outlet or does not promote the sale of packaged liquor does not necessarily mean that it does not sell packaged liquor.

67. I also consider that the likely degree of harm to result from the grant of the application would arise from the association of alcohol with grocery items and the risk of impulse purchasing and that the colocation of the proposed liquor store to the Supermarket at the Centre, will:
  - (a) provide large numbers of the community the opportunity to purchase alcohol when they might not have otherwise; and
  - (b) frequently expose a large volume of the community who may not have otherwise been exposed to a liquor outlet or alcohol because of its relationship with the supermarket.
68. In forming this view, I also accept and recognise that there is a substantial body of evidence establishing that an increase in the availability of packaged liquor is associated with increased harm or ill-health, both to alcohol consumers and others impacted by alcohol use.
69. However, these concerns need to be weighed against the reference in **Woolworths**, to the notorious fact that one-stop shopping in large suburban shopping centres is of great importance. In the present case, where there are existing packaged liquor outlets in close proximity to the Centre, I consider the public interest normally associated with the convenience of one-stop shopping is unlikely to carry as much persuasive influence, for the reasons given at paragraph 33 (above).
70. The Report of the CHO also referred to international experience and research, and observed that:
  - (a) the sale of alcohol in a premises located adjacent within (or conjunction with) a supermarket can lead to increased consumption and alcohol-related harm, particularly in this case where the proposed premises is seen as being 'specifically designed to provide complementary and ancillary services to the customers of the supermarket'; and
  - (b) unlike dedicated liquor outlets, liquor outlets that are located within (or in conjunction with) a supermarket, are generally frequented by a larger and broader proportion of the population because of the daily 'need' type products for sale. In those circumstances, the potential reach of alcohol-related harm is increased, given the

*BWS - Beer Wine Spirits Falcon*

regularity of exposure to the sale and promotion of alcohol that would occur in such a setting.

71. Having regard to all the evidence before me, I find that the grant of the licence would reasonably result in an increase in alcohol-related ill-health and harm in the locality.
72. I also find that the grant of the application would reasonably result in an increase in the degree of alcohol-related ill-health and harm in the locality, above and beyond the existing level of harm. That increase in the level of harm arises by virtue of the different nature of the liquor offering in the present case to those of the stand-alone packaged liquor outlets in the locality.
73. The research cited by the CHO establishes that the sale of alcohol in conjunction with a supermarket can lead to increased consumption and alcohol-related harm, as well as the normalisation of alcohol, which can impact on the patterns of alcohol use and lead to an increase in alcohol-related harm and ill-health.
74. Further, contrary to the views of the Applicant that 'the treatment data is far from compelling', I consider the data on treatment episodes for people residing in the locality reveals that there is already a high level of alcohol-related harm and ill-health in the locality and it is against those statistics that the relevance of research which indicates that the harm associated with packaged liquor sales usually occur away from the licensed premises, and at a later time and place, irrespective of a licensee's ability to maintain and adhere to regulatory requirements at the point of sale, becomes particularly relevant.
75. In relation to crime data, the Applicant noted that relevant data on the WA Police website does not report on the extent to which such data is alcohol-related. Nonetheless, the Applicant submitted that while it is evident that there is an existing level of crime in the locality, 'this is certainly not alarming or serious and overall, the offence rates have been declining.'
76. I have also noted the *Health and Crime Statistics report* relied upon information sourced from the most recently published *Community Safety and Crime Prevention Profile* for the City of Mandurah, being the 2009-10 report.
77. With respect to the Applicant, the information from this report pre-dates corresponding information that was considered by the licensing authority in 2016, which was based on Police data for the period between 1 January 2013 and 31 December 2015 and which was sufficient to establish that, at that time, there had been a significant increase in the rates of alcohol-related violence, and in particular domestic violence, in the locality. In my view, it is inappropriate for the Applicant to submit data for the locality or rely upon a report, where the relevant information pre-dates similar information already considered by the licensing authority and judged as sufficient to establish a high level of alcohol-related harm and ill-health in the locality.

*BWS - Beer Wine Spirits Falcon*

78. When I weigh and balance all of the competing factors, I am not satisfied that the Applicant has discharged its onus of establishing that the grant of the application is in the public interest.
79. Whilst there are benefits associated with the application, those benefits are marginal and insufficient to outweigh the public interest in minimising the risk of increased alcohol-related ill-health and harm if the application were granted.
80. Given my findings in respect of the application, it is not necessary for me to make a determination in respect of the validity of the objections.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING