

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

- Applicant:** PDG Geraldton Pty Ltd
(represented by Mr Gavin Crocket and Mr Peter Jeffree, Directors of the applicant)
- Intervener:** The Executive Director of Public Health
(represented by Ms Danielle Underwood of State Solicitor's Office)
- Objectors:** Commissioner of Police
(represented by Ms Danielle Underwood of State Solicitor's Office)
- Alana Holdings Pty Ltd
Queens Supermarket (WA) Pty Ltd
Glenfield Liquor Pty Ltd
("the licensee objectors" represented by Mr Phil Cockman of Canford Hospitality Consultants Pty Ltd)
- Mr Ian Blayney MLA
Hon. Paul Brown MLC
Ms Corryn Bull, Chair of Rangeway, Utakarra and Karloo Progress Association
Bundiyarra Aboriginal Community Aboriginal Corporation
Geraldton Streetwork Aboriginal Corporation
Mr Colin Findlay of Alana Holdings Pty Ltd
(individually and jointly with the licensee objectors)
of Utakarra Liquor Barn
Mr Richard De Trafford
Mr Freerk Zuideveld
Mr Donald Henry Patten and Marie Lesley Patten

Commission:	Mr Seamus Rafferty (Chairperson) Mr Eddie Watling (Deputy Chairperson) Ms Helen Cogan (Member)
Matter:	Application pursuant to section 25 of the <i>Liquor Control Act 1988</i> , for a review of a decision by the delegate of the Director of Liquor Licensing to refuse an application for the conditional grant of a liquor store licence for premises to be known as <i>Con's Liquor Geraldton</i> .
Premises:	<i>Con's Liquor Geraldton</i> , Lot 86, Utakarra Road, Geraldton
Date of Hearing:	8 March 2016
Date of Determination:	14 June 2016
Determination:	The application for the conditional grant of a liquor store licence is approved subject to the standard conditions imposed by the Director on a liquor store licence

Authorities referred to in the determination:

- *Woolworths v Director of Liquor Licensing* [2013] WASCA 227
- *O'Sullivan v Farrer* (1989) 168 CLR 210
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Executive Director of Health v Lily Creek International Pty Ltd & Others* (2000) 22 WAR 510
- *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51
- *Malec v J C Hutton Pty Ltd* (2000) 22 WAR 510
- *Kununurra Liquor Pty Ltd v Executive Director of Public Health and Others* (LC 09/2016)

Background

- 1 On 18 July 2014, an application was lodged by PDJ Geraldton Pty Ltd (“the applicant”) for the conditional grant of a liquor store licence for premises to be known as “Con’s Liquor Geraldton”, located at Lot 86 Utakarra Road, Utakarra, Geraldton. The application was made pursuant to section 68 of the *Liquor Control Act 1988* (“the Act”).
- 2 The applicant complied with the statutory requirements prescribed by the Act and lodged documentation in support of the application for the grant of a liquor store licence including a Public Interest Assessment (“PIA”). The application was advertised in accordance with instructions issued by the licensing authority.
- 3 During April 2015, a number of notices of objection to the application were lodged by the objectors listed in this application.
- 4 On 6 May 2015, the Executive Director of Public Health (“EDPH”) lodged a notice of intervention.
- 5 On 24 November 2015, the Delegate of the Director of Liquor Licensing (“the Director”) refused the application for the conditional grant of a liquor store licence. The basis for the decision was outlined in a written decision dated 24 November 2015.
- 6 On 25 November 2015, the applicant lodged an application for review of the decision of the Director pursuant to section 25 of the Act.
- 7 Prior to the hearing of this application the applicant, some of the objectors and the intervener lodged extensive written submissions in relation to this application and made oral submissions at the hearing which was conducted on 8 March 2016.

Submissions on behalf of the applicant

- 8 A voluminous amount of material was relied upon by the applicant in support of the application, including a Public Interest Assessment report (“PIA”). Based on that material, the Liquor Commission (“the Commission”) has distilled the following submissions relevant to this application, namely:
 - 1) The PIA noted that the City of Geraldton is the seventh fastest growing city in Australia and the opportunities for the community are extensive. The town is critical to the delivery of iron ore, gas, uranium and coal and there is a strong likelihood of population growth.
 - 2) Peter Jeffree is a director and shareholder of the applicant company. He is a very experienced operator of liquor stores in Western Australia and evidence showed a strong consumer demand for the provision of a large packaged liquor facility in Geraldton similar to those which have been successfully operated elsewhere in Western Australia by the applicant.

- 3) The applicant had done extensive research of the liquor and hospitality industry in Geraldton which established that a liquor store of the size proposed by the applicant is in the public interest. The following evidence supported the conclusion contended by the applicant, namely:
- a) all details of the locality and the broader trade catchment area for retail packaged liquor including the Greater Geraldton City and the Mid West region;
 - b) demographic data for the locality;
 - c) expert witness field assessments and site visits;
 - d) consultation with relevant stakeholders;
 - e) review of all packaged liquor outlets in the locality;
 - f) consultation with representative community groups;
 - g) conduct of a local survey of local residents;
 - h) commissioning of a number of expert reports including:
 - a town planning report (“the MGA report”);
 - an environmental and health assessment report (“the Caporn report”);
 - a retail shopper survey;
 - i) a summary of its findings on the analysis of the crime, hospital and alcohol related incidents for the locality;
 - j) a witness statement by Peter Jeffree;
 - k) a retail comparative report critiquing all packaged liquor outlets in Geraldton;
 - l) review of a number of studies on the large growth potential for the City of Geraldton;
 - m) details of existing (10) liquor licences in the locality capable of selling packaged liquor to the public – 4 are walk in liquor stores and 6 are taverns/hotels with drive through facilities.
- 4) It was submitted by the applicant that there is no liquor store of the size proposed currently operating in Geraldton. It was further submitted that the current licensed premises provide a poor range of wines, very few premium products and inadequate facilities. As a result of the existing arrangements,

consumers have been deprived of competitive prices and access to the multiple advantages of buying liquor as a 'bulk' sale. The applicant submitted that it could provide the following services that do not currently exist in the locality, namely:

- a) staff with specialist knowledge in wines;
 - b) weekly tastings;
 - c) a large range of wines from other countries;
 - d) a large range of beers from other countries;
 - e) a range of "cellar" matured wines;
 - f) trolleys for purchases;
 - g) a large range of products on special every week;
 - h) staff with specialist product knowledge;
 - i) extremely competitive pricing of wine beer and spirits;
 - j) a large range of West Australian wines;
 - k) a large range of Australian and international wines;
 - l) a large range of spirits and liqueurs;
 - m) a large range of craft and boutique beers;
 - n) a range of back vintages.
- 5) The applicant has a proven record of strong and effective control and management provisions in a large format store and has provided for appropriate security and harm minimisation measures.
- 6) The proposed site for the premises has a large onsite parking area and adequate access and egress facilities and while at the geographic heart of Greater Geraldton, avoids the congestion of the CBD.
- 7) The applicant has developed and adapted its large format model to stay in line with market trends, as opposed to the lack of development of the packaged liquor businesses in Geraldton.
- 8) The applicant has undertaken a survey of packaged liquor consumers in the area and states that almost all respondents support the application, some on the basis of the products and services that the proposed store will provide and some on

the basis of the current inadequacies of products and services provided by existing outlets. A detailed analysis of the responses was provided.

Submissions on behalf of the Commissioner of Police

- 9 The Commissioner of Police (“the Police”) objected to the granting of the application. In the context of the matters that the Police bore the onus of proof of establishing, it was submitted that:
 - a) the grant of the application would not be in the public interest (section 74(1)(a) of the Act); and
 - 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 (section 74(1)(b) of the Act).
- 10 The Police made the following relevant submissions, namely:
 - a) much of the applicant’s supporting documentation regarding regional growth was outdated;
 - b) there are ‘at risk’ groups within the locality;
 - c) the locality is recognised to be suffering from a serious and significant level of alcohol related harm and there is significant concern that such harm will increase if the availability of alcohol is increased;
 - d) given the low (18) numbers of surveys completed by respondents, their representation of consumer desire is limited and there is no evidence to suggest the locality or even the City of Geraldton has an expectation for a “comprehensive large format packaged liquor outlet”;
 - e) there are community concerns (evidenced in letters lodged by the Police) relating to:
 - competition will lead to lower prices, increasing alcohol availability;
 - binge drinking, directionless youth and community safety are issues for the locality;
 - licensed premises, no matter how well conducted, will negatively impact on the amenity of the area in which they are located.
- 11 The Police relied on the following evidence in support of the objection, namely:
 - a) statistics relating to harm including statistics relating to income and employment levels which indicate the locality is a low socio-economic area;
 - b) statistics relating to offences and crime, more particularly alcohol related crime and offences including domestic assault.

12 It was ultimately contended that:

- a) the premises will be in proximity to an existing liquor store (Utakarra Liquor Barn adjacent to local IGA Supermarket);
- b) the suburb of Utakarra and surrounding areas suffer from a serious level of alcohol related harm and there is a likelihood that such harm will increase;
- c) a small increase in the level of harm would be unacceptable;
- d) the applicant had not fully addressed or negated the crime, amenity and harm related issues which may arise from approval of the application;
- e) the evidence of harm in the locality far outweighed the consumer requirement evidence submitted by the applicant.

Submissions by parties other than licensee objectors

13 Objections to the application were also filed by the following parties, namely:

- a) Mr Ian Blayney MLA;
- b) Hon Paul Brown MLC;
- c) Mr Richard De Trafford;
- d) Ms Corryn Bull, Chair of Rangeway, Utakarra and Karloo Progress Association;
- e) Bundiyarra Aboriginal Community Aboriginal Corporation;
- f) Geraldton Streetwork Aboriginal Corporation.

14 These objections were dealt with in some detail in the Director's decision and were generally consistent in expressing concerns that:

- a) there is a high level of at-risk persons residing in the locality who would be exposed to a discount, high volume liquor outlet;
- b) the proposed liquor store is to be located on a property in proximity to an existing packaged liquor outlet (Utakarra Liquor Barn), which will encourage price discounting to the detriment of the at-risk persons in the locality;
- c) the proposed liquor store will be in close proximity to the Bundiyarra Aboriginal Corporation;

- d) because of the locality circumstances, a high-volume liquor outlet has the potential to exacerbate existing crime and anti-social behaviour and inflame tensions in the local community;
 - e) many of the economic forecasts for Geraldton presented by the applicant have been overstated due to the more recent downturn in the mining industry;
 - f) there are already 20 licensed premises that sell packaged liquor in Geraldton that are adequately catering for the requirements of consumers.
- 15 The Director's decision dealt properly and adequately with other objections lodged, including those of Freer Zuideveld and Donald and Marie Patten which, correctly, were not heard because they raised no relevant issues.
- 16 The Director's decision also dealt properly and adequately with the issues of lodgment of evidence and submissions outside the permitted time frames, which were disregarded absent any application for leave to lodge the same.

Submissions on behalf of the licensee objectors

- 17 Objections were also filed by the following parties who currently operate licensed premises in Geraldton, namely:
- a) Alana Holdings Pty Ltd (Mr Colin Findlay);
 - b) Queens Supermarkets (WA) Pty Ltd (Mr Kyme Rigter);
 - c) Glenfield Liquor Pty Ltd (Mr Nathan Tomms).
- 18 The objections are based on the following grounds:
- a) the grant of the application would not be in the public interest - section 74(1)(a);
 - 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 – section 74(1)(b);
 - c) that if the application were granted 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 manner be lessened – section 74(1)(g)(ii).
- 19 Generally the licensee objectors have founded their submissions on:
- a) an allegation of an incorrect assessment by the applicant as to the extent of population growth and economic prosperity in Geraldton;
 - b) the delay being experienced in other infrastructure projects such as the Oakajee Port development with the area identified as highly vulnerable to job loss;

- c) high unemployment in Geraldton generally, with an even higher rate of unemployment in the suburbs surrounding the proposed liquor store;
 - d) the high level of at-risk persons living in the surrounding suburbs;
 - e) the fact that there are an adequate number of existing packaged liquor outlets in the area catering for the requirements of consumers, both in the senses of product range and price competitiveness;
 - f) the potential for an unacceptable increase in the level of anti-social activity and crime in the area as a consequence of granting this licence.
- 20 It is appropriate for existing licensees to file objections in matters of this nature, however, in assessing the weight to be attributed to the submissions of such parties, the Commission is mindful of the potential motivation in objecting to the granting of a new licence. As a matter of common sense, existing licensees may be fearful of the financial impact on their businesses if a new licence were granted, particularly for a store of the size proposed by the applicant.

Submissions on behalf of the Executive Director of Public Health

- 21 The relevant submissions by the EDPH were as follows, namely:
- a) the purpose of the intervention was to make representations regarding harm or ill health due to the use of liquor and the minimisation of that harm;
 - b) the applicant has indicated they will be supplying liquor at prices well below what is currently available in Geraldton;
 - c) the large size format (1200 square metres) store layout and location are risk factors for alcohol related harm;
 - d) the risk of harm associated with each of the characteristics of the store is exacerbated when introduced to an environment that already contains risk factors;
 - e) the locality of the proposed liquor store contains numerous risk factors including but not limited to:
 - the presence of at risk groups in the locality who currently experience alcohol related harm, both directly and indirectly;
 - alcohol related domestic assault rates are higher than the state rate;
 - the overall social profile of the locality; and

- relevant research and literature highlights the potential for harm to occur by providing a contextual nexus to the specific locality and application characteristics.
- f) the intervention shows that the proposed liquor outlet will not be an ordinary liquor store, creating an increase in the economic and physical availability of alcohol in the locality and thus greater potential for harm and ill health;
 - g) the report annexed to the notice of intervention contained supporting representations and a comprehensive survey of statistics and literature concerning amongst other things the correlation between alcohol availability and alcohol related harm, the relevance of the price of alcohol to harm, the impact of price on health, how packaged liquor contributes to particular harms, at risk, vulnerable groups in the locality and related potential for harm; alcohol related hospital presentations and hospitalisations, domestic and non domestic related assaults and alcohol treatment episodes in the locality.

Further submissions to the Director by the parties

22 The parties lodged further submissions to the Director as follows, namely:

- a) comprehensive responsive witness statement of Peter Jeffree with numerous attachments including 8 witness statements;
- b) further evidence and responsive submissions of the Police;
- c) opening legal submissions by the applicant;
- d) additional submissions by the EDPH;
- e) further submissions from Canford Hospitality Consultants on behalf of the licensee objectors ;
- f) further responsive submissions by the applicant;
- g) further responsive submissions on behalf of the licensee objectors (attachments not considered by the Director – see paragraph 5 of the Director's decision);
- h) responsive submissions from the Police;
- i) responsive submissions from EDPH;
- j) final closing submissions from the applicant;
- k) responsive submissions from the licensee objectors;

- l) responsive submissions from the applicant in relation to the Police and EDPH submissions;
- m) police closing submissions;
- n) EDPH closing submissions.

Submissions by the parties to the Commission

23 The parties relied upon the following written materials before the Commission, namely:

- a) applicant's outline of submissions;
- b) submissions on behalf of the Police;
- c) EDPH outline of submissions;
- d) submissions on behalf of the licensee objectors;
- e) EDPH outline of responsive submissions;
- f) responsive submissions on behalf of the Police.

24 In determining this application, the Commission has had regard to all materials before the Director at first instance and further submissions made by the parties. The fact that a matter has not been referred to in these written reasons should not be construed as the Commission ignoring a relevant matter.

Statutory Framework

25 In *Woolworths v Director of Liquor Licensing*¹ His Honour Buss JA set out the statutory framework for a determination of an application pursuant to section 25 of the Act 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;²

¹ [2013] WASCA 227

² *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson & GaudronJJ). 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. See *O'Sullivan* (216).

- 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;
- 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.

26 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.

Determination

- 27 An application pursuant to section 25 of the Act is a hearing *de novo*. As such, the Commission does not have to find error at first instance.
- 28 This is yet another application before the Commission that presents with a tension between two of the primary objects of the Act, they being to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor and 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.
- 29 The approach that the Commission must adopt in its determination of this application is that outlined by His Honour Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*³. Based on that decision, the Commission is required to:
- a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
 - b) make findings about the likely degree of harm to result from the grant of the application;
 - c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
 - d) weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant had satisfied the Commission that it was in the public interest to grant the licence.

Findings as to the existing levels of harm

- 30 The evidence relevant to an assessment of harm in the locality is contained in the following materials before the Commission:
- a) statistics provided by the Commissioner of Police, specifically in respect to crime rates in suburbs close to the proposed premises;
 - b) objection of Ian Blayney MLA;
 - c) objection of Hon Paul Brown MLC;
 - d) objection of Ms Corryn Bull Chair of Rangeway, Utakarra and Karloo Progress Association;
 - e) objection of Bundiyarra Aboriginal Community Aboriginal Corporation;

³ [2015] WASC 208

f) evidence from the EDPH which included:

- the per capita consumption of alcohol is significantly higher than the State average;
- the hospitalisation rate for all alcohol related conditions was higher than the overall State rate;
- the rate of domestic violence per 1000 persons in the sub-district of Geraldton was approximately 2.5 times higher than the State rate;
- the rate of alcohol related domestic violence in the suburbs close to the proposed store was between 5 and 14 times the State rate.

31 Based on the totality of the evidence, the Commission is satisfied that:

- a) there is harm and ill-health caused to people due to the use of liquor in Geraldton;
- b) the level of harm is higher than in other locations within Western Australia;
- c) the level of harm associated with alcohol is high in suburbs close to the proposed premises, namely Rangeway, Utakarra and Karloo.

Findings as to the likely degree of harm to result from the grant of the application

32 This assessment requires the Commission to predict whether the granting of the licence would result in an increase in the degree of harm or ill-health caused by the use of alcohol in the relevant locality.

33 In *Executive Director of Health v Lily Creek International Pty Ltd & Others*⁴, His Honour Ipp J stated that, 'whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in *Malec v JC Hutton Pty Ltd*, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.'⁵

34 There are a number of factors that need to be balanced in making a prediction as to the likely degree of harm or ill-health that may result from the grant of the application, including but not limited to:

- a) the introduction of a large sized retail operation in a country town;

⁴ (2000) 22 WAR 510

⁵ *supra*, at 516

- b) the proposed low cost of liquor to be sold from the proposed premises;
 - c) research as to the relationship between the availability of alcohol and the frequency and range of social and health problems;
 - d) the character of the applicant;
 - e) the number of “at-risk” persons within the locality.
- 35 The general evidence before the Commission in respect to outlet density and risk of harm and the correlation between low cost liquor and harm is a significant factor in assessing the likely degree of harm that would result from the granting of the application. The Commission has previously placed significant emphasis on evidence relating to outlet density and the associated risk of harm in refusing applications for liquor stores in country towns.⁶
- 36 However, the proposed premises will be operated by an experienced licensee who has operated a similar sized business in a similar sized town in country Western Australia. The Commission was impressed by the oral submissions made by Mr Peter Jeffree at the hearing of this application and accepts that significant harm-minimisation measures will be adopted to protect those persons who are at-risk within the locality.
- 37 The Commission is persuaded that the applicant’s business model is not based on catering for the requirements of consumers for lower cost products nor, as a destination liquor store, is the business directed towards the immediate locality, which in fact is not a high residential area and consists of large tracts of underdeveloped land.
- 38 There is an existing convenience liquor store in the locality which has traditionally catered for the neighbourhood market and therefore liquor products are already available in the area. The Commission accepts that the applicant’s business model is not directed at the neighbourhood market, but in attracting patronage from the wider Geraldton and mid-west region, generally by means of a specific vehicle trip as the location will not be convenient to the vast majority of potential patrons without private transport.
- 39 The Commission also acknowledges that the applicant’s business model, which has been applied in other locations, places an emphasis on showcasing and promoting table and boutique wines and that certain products such as cheap sherries, port, fortified wine, four litre casks of wine, etc. will not be carried in the store.
- 40 Notwithstanding the general evidence before the Commission relevant to an assessment of the potential of harm and ill-health issues, the Commission is satisfied that the likely degree of harm that would result from the granting of the application is low. This finding has been reached on an assessment of the character and established destination liquor store operational record of the applicant and a consideration of the

⁶ *Kununurra Liquor Pty Ltd v Executive Director of Public Health & Others* (LC 09/2016)

harm minimisation measures that would be adopted by the applicant within an established business model.

Assessment of the likely degree of harm to result from the granting of the application against the existing degree of harm

- 41 In *Liquorland (Australia) Pty Ltd v Executive Director of Public Health*⁷ His Honour Justice Edelman 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.'⁸
- 42 Whilst acknowledging that there is a high level of harm associated with the use of alcohol in the relevant locality, it is not at such levels where it could be determined that any increase, even small would be unacceptable. Given that the Commission has determined that there is a low risk of an increase in harm that would result from the granting of the application, it cannot be concluded that such risk would result in unacceptable levels of harm.

Weighing the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant had satisfied the Commission that it was in the public interest to grant the licence.

- 43 The evidence before the Commission established that in 2011 Geraldton had a population of almost 40,000 people. It is a large country town, that has experienced considerable growth during the course of the mining boom. It is accepted that the applicant has overstated the further growth within the Geraldton community as it is clear that the mining boom, which to a large degree precipitated the growth in Geraldton, is now over. However, there is sufficient evidence before the Commission to conclude that growth will continue in the greater Geraldton area, just not at the rates previously seen during the mining boom.
- 44 Notwithstanding the overstatement of levels of growth made by the applicant, the Commission has determined that Geraldton is a town large enough to warrant the establishment of a destination style liquor store. A store of the size proposed by the applicant will cater to the requirements of liquor in a large country town and areas surrounding the town of Geraldton.
- 45 Accordingly, the Commission is satisfied that the applicant has established on the balance of probabilities that the granting of the licence is in the public interest.

⁷ [2013] WASC 51

⁸ *supra*, at [57]

Consideration of objections

- 46 The concerns outlined by the non-licensee objecting parties in the evidence and submissions provided are valid and the Commission appreciates the efforts made by each party to furnish the Commission with information relevant to this determination.
- 47 It is clear from the evidence before the Commission that Geraldton is a town with a higher percentage of at-risk persons than in other parts of Western Australia and that there are social issues within the town relating to the use of alcohol.
- 48 After having given careful consideration to all of the matters raised by the non-licensee objectors, the Commission is not satisfied that the objectors have discharged the onus prescribed by section 73(10) of the Act. It has not been established that the granting of the application would cause undue [emphasis added] harm or ill-health to people, or any group of people, due to the use of liquor. Whilst there may be some increase in harm or ill-health as a result of the granting of the licence, as already noted, the Commission considers that the nature of the proposed premises and the experience of the applicant are factors that lead to a conclusion that any increase in harm or ill-health will be minimal.
- 49 Given that the applicant has established that the granting of the application is in the public interest, the objectors have therefore not established to the requisite standard that the granting of the application is not in the public interest.
- 50 In respect to the materials put forward on behalf of the licensee objectors, the Commission notes that such materials were not particularly helpful. Many of the assertions are general in nature and merely a critique of materials submitted by the applicant or comments on materials submitted by other parties.
- 51 The statement on behalf of the licensee objectors that, 'there is an appropriate competitive balance between the existing packaged liquor outlets in Geraldton today, which can be seen as very proper development of the industry' must be viewed critically. In circumstances where there is a potential that the licensee objectors may be adversely impacted upon by the granting of the licence, such statements as that referred to are of no assistance and ultimately given no weight by the Commission.
- 52 The licensee objectors have failed to discharge their onus as prescribed by section 73(10) of the Act and have therefore failed to establish each ground of objection.

Conclusion

- 53 This application requires the Commission to undertake a weighing and balancing exercise between primary objectives of the Act i.e. between section 5(1)(b) in relation to the minimisation of harm and ill-health and section 5(1)(c) in relation to catering for the requirement 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.

- 54 In applying the approach referred to by Allanson J in *Carnegies*, the Commission has come to the view that whilst there are recognised harm and ill-health issues related to the use of alcohol in Geraldton, it is satisfied that the likely degree of harm that would result from the granting of the application is low due to the experience and demonstrated operational capabilities of the applicant.
- 55 Geraldton is a major regional centre and regardless of its current economic status can, in the interests of catering for the requirements of consumers, be considered an appropriate location for a large format style of liquor store similar to those that already exist in other major regional centers, such as Albany and Bunbury.
- 56 Accordingly the decision of the Director is quashed and the application is granted subject to the standard conditions imposed by the Director on a liquor store licence and including a condition prohibiting the licensee to sell low cost items such as sherries, port, fortified wine, four litre casks of wine, etc. (as voluntarily submitted by the applicant).

Orders

- 57 The orders of the Commission are as follows:
- a) the decision of the delegate of the Director at first instance refusing the application is quashed pursuant to section 25(4)(a) of the Act;
 - b) the application of PDJ Geraldton Pty Ltd dated 18 July 2014 for the conditional grant of a liquor store licence is granted subject to standard conditions of the Director pursuant to sections 25(4)(b) and 62(2) of the Act.



SEAMUS RAFFERTY
CHAIRPERSON