

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR SUBSTITUTION OF PREMISES AND APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

LICENCE NUMBER: 80900870

REFERENCE: LC2019/038 and LC2020/007

LICENSEE: Liquorland (Australia) Pty Ltd

PROPOSED PREMISES: Liquorland
Oasis Shopping Village
PALMERSTON NT 0831

APPLICANT: Liquorland (Australia) Pty Ltd

LEGISLATION: Sections 46A and 110 of the *Liquor Act 1978*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Pauline Reynolds (Health Member)
Ms Christine Hart (Community Member)

DATES OF HEARING: 30 July 2019, 29 August 2019 and 28 April 2020

DATE OF DECISION: 3 July 2020

Decision

1. For the reasons set out below and in accordance section 112(2)(b) of the *Liquor Act 2019* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) has determined to refuse the application in respect of Liquorland (Australia) Pty Ltd (“the Applicant”) to amend the licence by substituting other premises in the licence.
2. As the Applicant has indicated it no longer intends to pursue the application pursuant to section 110 of the Act to vary conditions, that was lodged on 20 December 2019, that application will be dismissed.

Reasons

Background

3. On 26 July 2018, an application was lodged by Ward Keller Solicitors on behalf of the Applicant in respect of a liquor licence known as The Berrimah Supermarket, which was described as a “Store Authority”. The application was for both a transfer of the licence to the Applicant in accordance with section 41 of the *Liquor Act 1978* (the 1978 Act) and a substitution of premises in accordance with section 46A of the 1978 Act.
4. The original premises of the Berrimah Supermarket no longer exist and there has been no trade under that licence for approximately ten years.
5. These applications need to be viewed in the context of a decision of Woolworths Group Limited (Woolworths), a competitor of the Applicant to vacate premises it had leased for 20 years in the Oasis Shopping Village, Palmerston in July 2017 and relocate to a new development at Gateway Shopping Centre. Coles which was already operating a supermarket with an attached Liquorland outlet in the nearby Palmerston Shopping Centre secured a lease over the premises that had been vacated by Woolworths.
6. During Woolworth’s tenancy at Oasis Shopping Village it had sold liquor pursuant to a store licence, most recently under the name of BWS. At the date, these applications were lodged and up until 3 March 2020 the Woolworths’ BWS licence still attached to these premises. Liquorland had previously sought a store licence for the proposed outlet associated with the new Coles supermarket at Oasis Shopping Village (by application lodged 1 August 2017) however this was refused on 28 February 2018 on the basis that it was contrary to the moratorium policy that then prevailed.
7. Pursuant to section 24(2) of the 1978 Act and section 84(3) of the 2019 Act, no new takeaway liquor licence or authority may be issued or created until after 31 August 2023. This legislative moratorium was no doubt the motivation for the Applicant to enter into an agreement to purchase the Berrimah Supermarket Licence and to embark upon the process of obtaining its transfer and applying for the substitution of the premises under the Berrimah licence to the proposed Liquorland Store at Oasis Shopping Village.
8. The transfer application presented a number of technical difficulties reconciling those provisions of the 1978 Act which required the decision maker to assess the suitability of the (non-existent) premises and section 30 of the 1978 Act which provided that a licence remains in force until surrendered, suspended or cancelled under the Act. The transfer application was ultimately approved and a licence issued in the name of the applicant on 19 December 2018.
9. Once the transfer application had been approved, the Director-General of Licensing (“the Director-General”) commenced processing the application for substitution of premises.

10. In support of the substitution application the Applicant relied on the following documentation:
- Affidavit in accordance with Section 46A(1A) of the 1978 Act;
 - ASIC report for Liquorland (Australia) Pty Ltd showing corporate structure;
 - ASIC Business Name extract;
 - Community Impact Assessment in accordance with Section 6A of the 1978 Act (including expert report of Ms Marie Verschuer dated 11 May 2018);
 - Agreement for Lease;
 - Lease;
 - Financial Reports of Applicant;
 - Coles Liquor Training Program;
 - Licensing and Safe Trading Booklet;
 - House Policy for the Responsible Service of Alcohol and Tobacco;
 - Responsible Promotion and Advertising of Alcohol Policy;
 - Coles Liquor RSA Compliance and ID25 Programs.

Publication and Consultation

11. Pursuant to section 27(1) of the 1978 Act, notice of the application was published in the NT News on Wednesday 16 January 2019 and Saturday 19 January 2019. In addition, the licensee was directed to display the “Green Sign” at a prominent external area of the proposed premises for a 30-day period coinciding with the notices published in the NT News. Copies of the notices in the newspaper and photographs of the green sign erected at the proposed premises were provided and a signed declaration that the public notice “Green Sign” was displayed in accordance with the direction.
12. As a result of publication of the application, no objections were received from the public.
13. Notification and comments were sought from:
- CEO of Department of Health;
 - Commissioner Northern Territory Police;
 - CEO of the City of Palmerston.
14. The Department of Health advised via email dated 17 January 2019 that it has no adverse comment.
15. The Northern Territory Police replied via email dated 13 February 2019 advising it wished to object to the application. A letter of objection in accordance with Section 47F of the Act signed by Superintendent Antony Deutrom was attached to the email.

16. The City of Palmerston replied via email dated 15 February 2019 advising it wished to object to the application. A letter of objection in accordance with Section 47F of the Act signed by Mr Luccio Cercarelli, Chief Executive Officer, was attached to the email.
17. Both letters of objections were forwarded to the Applicant's legal counsel, Ward Keller Solicitors on 19 February 2019 in accordance with Section 47G of the Act advising the Applicant of the objections and seeking a response by the 5 March 2019. On 27 February 2019 the Applicant's legal counsel sought a further extension of time for the submission of the response which was granted to 12 March 2019. On 12 March 2019, the Applicant's legal counsel sought a further extension of time to submit the response which was extended to 15 March 2019. All extensions were granted on the basis of written requests and on the basis that it was the Applicant who was delaying their own application.
18. An extremely detailed response was supplied by the Applicant's legal counsel on 13 March 2019. In summary, the response rejected the objector's points of view and provided a range of evidence to support the response including a further report dated 12 March 2019 from Ms Verschuer.
19. On 4 April 2019, the application was referred to the Commission by the Acting Deputy Director-General (ADDG) to fix a time and place for the hearing of the application. In the course of her comments concerning the referral, the ADDG noted that the Woolworths BWS liquor licence was still technically recorded upon the same premises and that section 31 of the 1978 Act did not appear to empower the Commission to grant any approval of the substitution application subject to conditions.

Directions Hearing

20. Following receipt of the referral and after liaising with the Applicant's counsel and counsel for the Objectors, the Commission listed the matter for a directions hearing on 16 May 2019.
21. At the Directions Hearing, Mr Nicholai Christrup SC appeared on behalf of the Applicant. Mr Joshua Nottle appeared on behalf of the Objector NT Police, Mr Philip Timney appeared as counsel to assist the Commission and Mr Des Crowe sought leave to appear on behalf of Australian Hotels Association (NT Branch) (AHA NT) pursuant to section 51(c) of the 1978 Act. Mr Crowe argued that AHA NT was uniquely positioned to offer the Commission assistance on the issue of volume of liquor sales and economic benefits.

22. The Commission determined in line with an earlier ruling in a similar application by Woolworths Group Ltd in respect of its Darwin Dan Murphy's proposal¹ that section 51(c) of the 1978 Act clearly envisaged the granting of leave to appear to a peak industry body such as AHA NT. Accordingly leave was granted to AHA NT to appear and make submissions in relation to alcohol volume and density issues.
23. The Commission set down a hearing for 2 days commencing on 30 July 2019 at a venue to be determined.

The Hearing

24. The Public hearing was scheduled for 30 and 31 July 2019 but the evidence was completed on the first day and the matter adjourned off for submissions. Mr Christrup SC appeared for the Applicant, Mr Nottle of Counsel appeared for the Police, Mr Crowe appeared for AHA NT and Mr Timney appeared as counsel to assist the Commission. The Commission is grateful for the efforts of all those who appeared in this matter.

The Evidence for the Applicant

25. Ms Verschuer, a social researcher was engaged by the applicant to undertake an amenity audit and social impact assessment in relation to the proposed Liquorland Oasis store. She prepared two reports in this matter, one dated 11 May 2018 and the other dated 12 March 2019 which were both included in the documents constituting the Director-General's Referral brief which was Exhibit 1 in these proceedings. Ms Verschuer also gave evidence and was cross-examined at the hearing.
26. Ms Verschuer spent three consecutive days in Palmerston for the purpose of preparing her report². She had only done similar work in the Northern Territory on one previous occasion³. Although she has worked extensively for Coles Liquorland most of that work was confined to Western Australia⁴.
27. In her final report of 12 March 2019, having considered the objections of NT Police and Palmerston City Council, Ms Verschuer provided the following summary of the reasons why she supported the application:

"7.0 Summary

7.1 In summary the objections raised are based on NT evidence. It is clear that the demographic profile is significantly different from that of the NT as whole. It is noted that much of the information provided by NT Police and the City is general in nature and does not specifically relate to the Application.

¹ See Northern Territory Liquor Commission Decision Notice – Application for substitution of premises and permanent variation of the conditions of licence – Woolworths Group Ltd (Darwin Dan Murphy's)

² Transcript, p 22

³ Transcript, p 26

⁴ Transcript, p26

- i. The Locality is more advantaged and has a smaller percentage of Aboriginal and non-English residents. There are areas of disadvantage but these are not directly adjacent to the Centre.
- ii. Household expenditure and consumption levels of the Locality (Palmerston) population is significantly less than that of the NT and similar to the National average.
- iii. Store density in the Locality is 7 times less than that of the NT and the level of density is not excessive by standards used in other national and international jurisdictions.
- iv. The Store being internal to a shopping centre will have little amenity impacts on the surrounding area and will have less exposure to passers-by.
- v. The Store will provide a full service supermarket/liquor store combination that is common in the NT and will help to support the visitation and viability of the Centre.
- vi. There are intervention initiatives in place are working to reduce alcohol related crime and harm and are effectively reducing supply to those most at risk of harm.
- vii. The proposed store is not a stand-alone store or a corner store. It will be located within an internalised and controlled city centre location, operated by a responsible licensee. As such being consistent with the recommendations of the Riley Review.

7.2 It is my opinion that there are greater benefits than risks associated with the granting of the Application for the Liquorland Oasis liquor licence.”

28. Whilst acknowledging that “the harm caused by alcohol in Northern Territory is concerning”⁵, in both her reports and evidence before the Commission Ms Verschuer stressed that the demographic data suggested, “that Palmerston is not typical of the broader NT population. Palmerston has a significantly different profile”⁶.
29. For the purpose of her impact assessment, Ms Verschuer defined the “Locality” as the area encompassed within a 3 km radius of the proposed store. At page 10 of her 11 May 2018 report⁷ she provided the following demographic analysis of the Locality.

The Locality (defined by the LGA of Palmerston) at the 2016 Census had a population characterised by the following differences when compared to the Northern Territory (NT):

- The Locality has a higher proportion of those aged under 20 years (32.2%), in comparison to NT (27.9%), and Australia (24.8%).
- There was a lower proportion of those aged over 60 years (7.8%) in comparison to NT (11.6%), and Australia (21.3%)
- Lower proportion Aboriginal people (11.3%) than the NT (25.5%).

⁵ Exhibit 1, p283

⁶ Ibid, p283

⁷ Exhibit 1, p240

- There was a higher proportion of those who only speak English at home in the Locality (76.4%), in comparison to NT (58.0%) and Australia (72.7%).
- The proportion of couple families with children in the Locality (50.6%) was higher than the NT (46.2%) and Australia (44.7%).
- The proportion of lone person households in the Locality (17.0%) was lower than the NT (21.9%) and Australia (24.4%).
- Individual, household and family median weekly income levels within the Locality were much higher than the NT and Australia.
- ABS SEIFA data indicates the Locality population has a very high level of relative socio - economic advantage / disadvantage.
- More homes privately owned in the Locality (48.0%) than NT (44.9%)
- Lower unemployment in the Locality (5.1 %) than NT (7.0%) and Australia (6.9%)

Between 2011 and 2016 there has been the following changes in the Locality.

- Increase in the median age from 28 to 30 years.

Reduced Australian born population from (75.7% to 70.6%)

- Increase in rented homes (46.9% to 48.9%)
- Increased unemployment (3.7% to 5.1%) lower than NT and Australia (7%)
- Reduction in percentage of single parents (from 18.1% to 16.1%).

30. Whilst the statistical analysis provided by Ms Verschuer tends to portray the locality as significantly advantaged there are limitations as to the utility of some of the data upon which she relied. For example the fact that the locality has an overall “Lower proportion Aboriginal people (11.3%) than the NT (25.5%) is meaningless. As was pointed out to Ms Verschuer during the hearing, the Aboriginal population is not evenly distributed across the Territory, when compared with the majority of Darwin suburbs a proportion of 11.3% of residents identifying as Aboriginal is at the higher level⁸.
31. During her evidence Ms Verschuer was questioned by Commissioners about the fact that despite the apparent advantage of the locality overall there are older pockets of Palmerston with a long history of dysfunction that would be regarded as still significantly disadvantaged⁹. She conceded that the older suburbs of Grey and Moulden qualify as the most disadvantaged on the SEIFA index¹⁰. In her table “SA2 Area Comparison Census 2016”¹¹ it is clear that the suburbs of Grey, Driver and Moulden are more disadvantaged than the other suburbs within the locality. Furthermore whilst the map “SEIF 2016 map locality at SA2” on page 12 of her May 2018 report¹² depicts the proposed store as sitting between the disadvantaged southern suburbs of Grey and Driver and the advantaged suburb of North Palmerston the reality is that the CBD and Chung Wah Terrace form a buffer between the site and Palmerston North. Being situated on the southern side of the CBD, the Oasis Shopping Village will be more readily accessible to foot traffic from these less advantaged southern suburbs than by the residents of the locality as a whole.

⁸ Transcript, p32

⁹ Transcript, p32

¹⁰ Transcript, p44, Exhibit 1, p287

¹¹ Exhibit 1, p242

¹² Exhibit 1, p242

32. At para 4.33 of her March 2019 report¹³ she states;
- “As indicated on the SEIFA map provided by the City of Palmerston and in our report, although the Locality is considered highly advantaged there are areas of disadvantage. The suburbs of Grey and Moulden are found to be of most disadvantage. These areas have significantly greater proportion of Aboriginal people, higher numbers of lone parent households and higher levels of unemployment. Household income (\$1,242-\$1,286) is significantly less than that of the Locality (\$2,197). At SA 1 it can be seen that the areas where those most disadvantaged live are contained pockets within these suburbs with the areas immediately surrounding the Centre considered to have medium to high advantage”.
33. At the hearing, Ms Verschuer identified a further map of the locality which was tendered into evidence as Exhibit 5 which provided a more detailed analysis of the area at the SA1 level. This showed that area of the suburb of Grey which immediately abutted the Oasis Shopping Village was actually at the mid-level of disadvantage even though the suburb at the SA2 level was categorised as most disadvantaged.
34. Ms Verschuer’s evidence also covered the economic benefits to consumers that would arise through the grant of the application, the applicant’s record for responsible service of alcohol, the crime statistics and the risk mitigation strategies that would be implemented.
35. Mr Sean Stephens, an economist specialising in the economic impacts of urban development projects, prepared a report dated 13 July 2019 in support of the application and also gave evidence at the hearing. At page 25 of his report in his concluding remarks he made the following statement:

“6 Conclusions

- 6.1 The proposed Liquorland will operate in a manner wholly complementary to the role and function of Oasis Shopping Village as a supermarket-based shopping centre meeting the day-to-day needs of surrounding residents.
- 6.2 The Main Trade Area that would be served by the proposed Liquorland has experienced ongoing population growth over the past 15 years, and this growth is expected to continue for the foreseeable future. Additional liquor retailing will help meet a component of this growth in demand, including provision of the proposed Liquorland store at the Oasis Shopping Village.
- 6.3 The proposed Liquorland does not have attributes which will have any practical effect on overall levels of alcohol consumption, or the volume of packaged liquor sales. Provision of the store is simply a reflection of growing consumer demand through ongoing population growth in the trade area and enhancing the level of personal convenience for shoppers using the Oasis Shopping Village.

¹³ Exhibit 1, p287

6.4 As such, the proposed Liquorland Oasis Shopping Village will have no practical impact on overall volumes of alcohol sold in the surrounding trade area. The store will generate sales which represent a redirection of sales which would otherwise be generated by other liquor outlets, rather than contribute to any overall increase in total liquor sales.

6.5 I am of the professional opinion that the proposed Liquorland is consistent with the normal efforts of the retail industry to meet expanding market demand driven by ongoing population growth in the trade area, and also ensures consumers achieve their contemporary expectations for convenient access to take-home liquor facilities, both now and into the future. The proposed store will also generate a modest increase in local employment opportunities by providing 6 to 8 in-store jobs“

36. Mr Stephens provided a forecast of sales for a Liquorland at Oasis Shopping Village for 2021 of \$2.2 million¹⁴. He was cross-examined by Mr Crowe for the AHA NT over the accuracy of that estimate and it was suggested that the level of sales were more likely around \$4 million which he considered “high” and way above what was achievable¹⁵.
37. Although Mr Stephens’ projected sales figures seem overly cautious when compared to the level of Palmerston’s Liquorland BDR sales and the total volume of pure alcohol supplied to that outlet, together with the wholesale returns of the former Oasis BWS, the Commission accepts the overall thrust of his evidence that due to a national trend of declining alcohol consumption that “the proposed Liquorland Oasis Shopping Village will have no practical impact on the overall volumes of alcohol sold in the surrounding trade area”¹⁶.
38. Mr Stephens was not able to comment on the Northern Territory’s rates of alcohol consumption nor whether the overall decline in consumption has also seen a decline in the level of consumption by those that might be classed as “problem drinkers”¹⁷.
39. Ms Nancy Morley, the Store Manager of Coles Supermarket, Oasis Shopping Village submitted an affidavit dated 16 July 2019 in support of the application and also gave evidence before the Commission. She said that she had been approached by her customers “who expressed views to the effect that an adjoining Liquorland would offer convenience to them”¹⁸. Also annexed to her affidavit were eight letters of support from other tenants of the Oasis Shopping Village.

¹⁴ Ethos Urban Report, para 4.42

¹⁵ Transcript, p52

¹⁶ Ethos Urban Report, paras 5.3 and 6.4

¹⁷ Transcript, p54 and 55

¹⁸ Affidavit, para 6

The Objectors

40. Following the public advertisement of notice of this application, on 15 February 2019 the City of Palmerston lodged the following objection:

“Council objects to the granting of a Substitution of a Liquor Licence from Berrimah Supermarket to Lot 1219 Liquorland, Oasis Shopping Centre, Temple Terrace Palmerston, in accordance with Section 47F of the Liquor Act on the following grounds that the grant of licence may or will adversely affect:

(a) The amenity of the neighbourhood where the premises the subject of the application are or will be located;

- By relocating a licence from the Berrimah Supermarket (located within the Darwin Municipality) to the Oasis Shopping Centre (located in the Palmerston Municipality), Licensing NT will be essentially increasing the number of licences in Palmerston which is more likely to exacerbate harms associated with alcohol in this community.
- Oasis Shopping Centre is currently the only significant shopping complex that offers families and other shoppers, an opportunity to shop without the presence of a liquor outlet. Anecdotal evidence suggests that the associated anti-social behaviour that is prevalent in the other shopping precincts with liquor outlets is not present currently at Oasis Shopping Centre.

(b) Health, education, public safety or social conditions in the community;

- The Riley Review states, "Recent Australian studies have considered the relationship between outlet density, in the context of the numbers of outlets and volume of sales in a particular LGA or postcode, and alcohol related harms. The most recent study has shown that off-site outlet alcohol sales and the total volume of alcohol sales within a region are important predictors of assault. On this basis, it is reasonable to conclude that policy decisions that ultimately increase total alcohol sales within a community or that increase numbers of onsite outlets (e.g. hotels/nightclubs or restaurants) are more likely to exacerbate, rather than ameliorate, harms associated with alcohol."
- Although located within the Central Business District, the Oasis Shopping Centre is located adjacent to suburbs containing some of our most Socio-economically disadvantaged members of the community identified by the Australian Bureau of Statistics 2016 data and their enclosed plan.
- When considering the location, a number of 'at-risk' groups (as identified by NT Licencing) were noted to use services\facilities and were identified within the immediate vicinity. The Oasis Shopping Centre includes a number of facilities, that attract youth and families to this shopping centre, including the pharmacy, gymnasium, take away outlets and cafes.

- During recent consultation with the Palmerston community as part of creation of the draft Community Plan, a measure of success to the Strategic Outcome 1 Family and Community, was "Reduced crime rates - specifically a reduction in alcohol fuelled violence. The objective created for this outcome was "The wellbeing of our community is the focus for all our work." Council must then consider the wellbeing of our community when deliberating on any liquor licence applications. The draft Community Plan was developed by the community for the community and Council considers that it reflects the Palmerston community's views on social matters.
- There are no publicly accessible statistics on crime rates specific to the Locality therefore data must be taken from the closest available source which in this case is the Northern Territory Police crime data for Darwin. According to these statistics, over the last year, alcohol related crime, including domestic and nondomestic assaults have moderately increased in both Darwin and the Territory"¹⁹.

41. On being advised of the hearing date of this application the Council advised the Commission that whilst maintaining its objection the Council did not intend to take any further part in the proceedings.

42. On 13 February 2019 Superintendent Antony Deutrom of NT Police lodged the following objection:

"I am the Superintendent of the Palmerston Division, attached to the Darwin Command having held this position since 30 June 2016 and having been employed with the Northern Territory Police Force (NTPF) since 16 September 1994.

I am the appropriate NTPF representative to assess certain liquor applications in the Palmerston Division Pursuant to Section 47F of the liquor Act, Northern Territory, as a police officer specified in Section 47F(3)(c) m that capacity and where appropriate offer objections m accordance with Section 47F(2)(a)&(b).

Palmerston Division is part of the Darwin Command and incorporates the Palmerston, Humpty Doo, Adelaide River and Batchelor Policing Districts which encompasses the area of Oasis Shopping Centre, Palmerston City relevant to this application as initially provided through notice on 16 January 2019.

Palmerston Division collectively provides policing services to the Division including 81,008 incidents per year, 10,979 of which related to anti-social behaviour (ASB), 7,199 of which were alcohol related and 3714 of which were domestic violence related.

The impacts on the Northern Territory from alcohol are well documented and most recently evidenced through the Alcohol Policies and Legislation Review culminating in the Northern Territory Alcohol Harm Minimisation Action Plan 2018 -2019 and contemporarily recorded through the crime statistics.

¹⁹ Exhibit 1, p212 and 213

The impacts of alcohol on the Northern Territory Community continue to be appalling and pervasive, with the crime statistics alone painting a dire situation, culminating in extra strain on the NTPF.

Demand for NTPF services across the Northern Territory continues to rise with an increase of incidents by 39.52% year to date compared the previous period (389,834 up from 279,408) with 15.44% (60,379) of those incidents being alcohol related. In addition to these concerning figures the Northern Territory boasts many unenviable associations with alcohol, including but not limited to:

- 47.8% of adults in the Northern Territory exceed the National Health and Medical Council's guidelines for alcohol consumption;
- Alcohol consumption rate in the Northern Territory is at 173% of the national average;
- 22.6% the proportion of infectious diseases and deaths attributable to alcohol in the NT;
- 67% of domestic violence incidents in 2014 involved alcohol;
- 40% of road fatalities in the Northern Territory are alcohol related;
- Estimated economic cost to the Northern Territory of alcohol related harm is \$640 million per year:
- 1 Licensed establishment for approximately every 400 people (655 Licensed Premises in existence at time of reporting) living in the Northern Territory; and
- Highest rate of hospitalisations related to alcohol misuse.

Takeaway liquor sales for the Palmerston area in December 2018 alone were 88,899 sales or 19.36% of the total NT sales of 459,030.

An increase in alcohol availability could further impact on these figures in a negative manner. Coupled with the existing density of liquor licences in the area, the application does not demonstrate a need for an additional licensed premises (takeaway) to satisfy public interest and or need in the area as there are numerous licensed premises (takeaway) within short distances from the proposed site that adequately service the area to date. In addition, the applicant already has an established outlet within 237 metres from the proposed new site.

Since the BWS Liquor outlet under the Woolworths Liquor Group banner vacated the Oasis Shopping Centre there has been a noticeable decrease in ASB in the immediate area in and around the shopping centre proper, including of the adjoining escarpment and laneway which had long been problematic with alcohol related ASB. Problem drinkers and disturbances are almost non-existent in and around the Oasis Shopping Centre and the common community commentary to Police is that it is a pleasant and safe place for the community to attend and undertake their shopping.

In contrast the Palmerston Shopping Centre where a Liquorland outlet currently exists at Lot 22 Chung Wah Terrace, Palmerston continues to be one of the major ASB hot spots for Palmerston Police. There is frequent ASB, intoxicated persons, regular occurrences of rubbish been strewn around consisting of empty liquor bottles and packaging, graffiti painted on adjoining walls along with the gathering of problem drinkers in public spaces, all of which continue to adversely impact the community amenity.

On that basis, the application is not supported by the NT Police and therefore formally objected to.”²⁰

43. Superintendent Deutrom also filed a statutory declaration dated 18 July 2019 with attached statistical reports²¹ and gave evidence at the hearing.
44. At para 15 of his statutory declaration Superintendent Deutrom deposed;
“Since the BWS Liquor outlet under the Woolworths Liquor Group banner vacated the Oasis Shopping Centre (7 June 2017) there has been a noticeable decrease in Anti-Social Behaviour (ASB) in the immediate area in and around the shopping centre proper, including of the adjoining escarpment and laneway which had long been problematic with alcohol related ASB.”²²
45. At paragraph 18 of his statutory declaration Superintendent Deutrom asserted that there had been a 47.7% decrease in the number of incidents attended to by Police at 15 Temple Terrace (Oasis Shopping Village) in the two years following the closure of BWS liquor store. He stated that between 7 June 2015 and 7 June 2017 there had been 1392 incidents and between 7 June 2017 and 7 June 2019 there had been 728 incidents.
46. Superintendent Deutrom during his evidence conceded there were shortcomings with the statistical data upon which he relied. The statistics came from the Police PROMIS system which recorded all job types where Police attendance was requested at 15 Temple Terrace Palmerston²³. There were limitations with the range of available job types that could be recorded in PROMIS and the statistical report did not specify whether there was any definite alcohol involvement with the incident for which police attendance at the location was required.
47. Although it was not put to Superintendent Deutrom in cross-examination, the Applicant’s counsel has submitted that an examination of the PROMIS data demonstrates that the number of incidents attributed to Oasis Shopping Centre were already declining prior to the BWS closure in 2017²⁴. He made the following submission²⁵:

²⁰ Exhibit 1, p210 and 211

²¹ Exhibit 2

²² Exhibit 2

²³ Transcript, p75

²⁴ Applicant’s Submissions 20/08/20, paras 89 and 90

²⁵ Applicant’s Submissions 20/08/20, paras 89

“Liquorland has now had an opportunity to consider the chronological sequence of the incidents recorded in the PROMIS data. Leaving aside the possibility of minor miscounting, the trend in the incidents for the Oasis Shopping Village is as follows:

- a) 2015: 2,770 (estimated);
- b) 2016: 2,212;
- c) 2017: 1,755;
- d) 2018: 1,884; and
- e) 2019: 1,118 (estimated)”.

48. The Commission having now examined the PROMIS data finds that submission is based on an erroneous counting of the incident figures and is misleading. It is unfortunate that neither counsel for the Applicant nor counsel for the Police noticed the obvious incongruity between those figures and those contained in paragraph 18 of Superintendent Deutrom’s statutory declaration²⁶. It would appear that those instructing counsel for the Applicant have presented him with calculations based on the total incidents for both Oasis and Palmerston Shopping centres. The combination of the two sets of incident reports in relation to separate locations does nothing to assist us determine the nature of the overall declining trend of incidents at Oasis and is meaningless. The Commission rejects the Applicant’s submission that the PROMIS data it relied upon establishes that incidents at Oasis were already in decline prior to the closure of BWS.
49. Superintendent Deutrom deposed, that as Superintendent of the Palmerston Division he was required to “review incidents and patterns in my Division and report on them through the Command Tasking Group and Co-ordination Group (TCG), which is convened weekly. During the TCG process, taskings are allocated to respective Police Units based on patterns, hot spots and issues including that of ASB”²⁷.
50. When BWS was trading at Oasis Shopping Centre, Superintendent Deutrom said in his evidence “It was one of the locations post my arrival at Palmerston division that was an antisocial behaviour hotspot. There’s a number of spots that pop up throughout the division but at that time, and up until its closing, it proved to be problematic for us in the immediate shopping centre and the surrounds including laneways and down the side of Chung Wah Terrace”²⁸.
51. Since the closure of the BWS store, Superintendent Deutrom stated, “I have noticed a decrease and almost a non-existence of the anti-social behaviour in that locality”.²⁹ He said further,³⁰ “I guess my main point is that we’re not – the Police position in relation to opposing the adjustment of this licence is not a direct attack or a lean toward a particular outlet. It’s based on the fact that evidence shows us that removal of an outlet saw a decrease in workload for NT Police and a decrease in the type of incidents that directly impact our community”.

²⁶ See para 45 above

²⁷ Exhibit 2, para 16

²⁸ Transcript, p67

²⁹ Transcript, p68

³⁰ Transcript, p70

52. Counsel assisting the Commission sought the production of the relevant Banned Drinker Register (BDR) transactional register and Wholesale Pure Alcohol Content (PAC) data for relevant licensees in the Palmerston region to assist the Commission understand the volume of liquor sales within the Palmerston area the period from 2014 to 2018. Mr Crowe and Mr Alex Bruce from AHA NT helpfully analysed the data and provided a number of tables which enabled a comparison of BDR “sales” and total PAC provided for the different licensees operating within Palmerston city.
53. There were some obvious inaccuracies and omissions with the PAC data and it was noted in the AHA NT submissions at 10(b) and 10(c) that between 2014 and 2018 the total volume of pure alcohol going to all retailers in the data provided by the Department increased by 2.27% whilst for the same period the pure alcohol going to retailers in the Main Trading Area as defined in the report by Mr Stephens decreased by 14%. However in neither case was the downward or upward trend consistent over that five-year period so it is difficult to draw any reliable conclusions from this evidence.
54. At the conclusion of the evidence the matter was adjourned to 29 August 2019 for final oral submissions following the filing of written submissions by 27 August 2019.
55. On 29 August 2019, prior to the Applicant’s counsel commencing submissions, the Commission advised the parties that it was minded to have regard to an affidavit of Dr Livingston dated 27 May 2019 which had been filed with the Commission in the Woolworths Dan Murphy substitution hearing. Dr Livingston was one of the experts referred to in the Riley Review who suggested that an increase in the density of liquor outlets had been shown to have been associated with an increase in alcohol related criminal offending in a particular locality even though there may have been no overall increase in the level of liquor consumed by that community. The Commission observed that it appeared that the work of Dr Livingstone and associated researchers had motivated the Riley Review Panel to recommend that “density” be included as a specific consideration within section 6(3) of the Act³¹.
56. Counsel for the Applicant then requested that the final submissions be adjourned so that the Applicant could consider its positions in relation to this issue and also determine whether it would seek leave to adduce evidence from another expert on this issue. That application was not opposed by the other parties and the matter was adjourned until 4 December 2019.
57. The Commission delivered a decision in the Woolworth’s Group Ltd substitution application (Dan Murphy Decision) on 20 September 2019. In that decision the Commission expressed a preliminary view³² that the Commission did not have the power to grant a substitution application subject to conditions.

³¹ Riley Review, Recommendation 2.6.1

³² Darwin Dan Murphy’s Decision Notice, paras 131-134

58. On 15 October 2019, the Commission wrote to the Applicant's solicitor drawing their attention to that decision and inviting them to make further written submissions in relation to that issue. The applicant was also asked to file an affidavit outlining the nature of any further expert evidence it sought to rely upon.
59. The Applicant's solicitor submitted that the Commission should proceed to determine this application despite the pending review by the Northern Territory Civil and Administrative Tribunal (NTCAT) into the Commission's decision in the Dan Murphy matter. The Commission determined it would be inappropriate to proceed with this matter until NTCAT had delivered its ruling. Counsel assisting on behalf of the Commission advised the parties that the further hearing of the matter, scheduled for 4 December 2019, would be adjourned to a date to be fixed. On 23 December 2019, NTCAT delivered its decision "Woolworths Group Limited v Northern Territory Liquor Commission, Foundation for Alcohol Research and Education Ltd and Ors. (2019) NTCAT 37 (23 December 2019)".

In that decision, which struck out the application for review by Woolworths, the Tribunal confirmed that there was no power under the *Liquor Act (1978)* to grant a substitution application subject to conditions and also suggested that the Commission may have erred in its ruling that there was no requirement the proposed substituted premises be substantially similar to the premises being replaced³³. Such an interpretation of the Act in this case would have proved fatal to the application.

60. In the meantime, in a constructive attempt to overcome the perceived limitations within s46A of the 1978 Act, the Applicant lodged on 20 December 2019 a further application pursuant to s110 of the *Liquor Act 2019* (the 2019 Act) to vary the conditions of its licence. The Applicant proposed new conditions in relation to the operation of the proposed Oasis Shopping Village store which were in the nature of conditions that might have ordinarily been imposed by the Commission if it had the power to grant the substitution subject to conditions. One of the proposed conditions was:

"the licensee must not trade under the licence until Licence No. FLL1055 held by Woolworths Group is substituted to other premises, abandoned, surrendered or cancelled."

61. Following the NTCAT decision in the Woolworths substitution matter, Woolworths commenced proceedings in the Supreme Court to appeal that decision. The Northern Territory Government also announced it would be introducing urgent legislation to amend those provisions of the 2019 Act which governed substitution applications.
62. The Liquor Amendment Bill (2020) was introduced in the February sittings with a proposed commencement date of late March 2020.

³³ NTCAT Decision 37, paras 152-167

63. On 2 March 2020, the Commission held a directions hearing where orders were made permitting the applicant to adduce further expert evidence in the form of a statement by a statistician, Dr Henstridge. The Commission also indicated that it would be obtaining a further report from Dr Livingstone. The applicant sought an adjournment of the further hearing of the matter so that it could take advantage of the foreshadowed amendments to the Act so the matter was adjourned for final submissions until 28 April 2020.

Legislative Regime

64. The *Liquor Amendment Act 2020 (NT)* commenced on 27 March 2020 and now applies to this application. The new section 326(2) now mandates that the application must proceed and be determined under section 75(2) and (2A) of the 2019 Act which provide:

Section 75 Substitution of premises

(2) *Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that the substitution satisfies the public interest and community impact requirements.*

(2A) *To avoid doubt, the Commission may, under subsection (2):*

(a) *impose conditions on the substitution; and*

(b) *substitute premises that are not yet constructed or are still under construction.*

65. In final written submissions dated 24 April 2020, Counsel for the applicant submitted³⁴:

“.....it would seem that the 1978 Act no longer applies to the determination of the application....secondly, unlike the previous section 326 which caused the entire 1978 Act to apply to the application, the new section 326 refers only to subsections 75(2) and (2A) of the 2019 Act. Given the wording, there is at least a question as to how much of the 2019 Act applies to existing substitution applications, but it is tolerably clear that at least sections 75(1) and (3) do not apply”.

66. When pressed at the hearing on 28 April 2020 as to the significance of this observation, Counsel for the Applicant did not identify any other relevant provisions of the 2019 Act that would not apply to this application. There were no submissions by any other counsel that the 2019 Act did not now govern this application so the Commission will proceed to determine it in accordance with the 2019 Act. This is despite the fact that the hearing of the application and earlier written submissions filed with the Commission all proceeded on the basis that the 1978 Act applied to the determination of the application.

³⁴ Applicant’s closing submissions, 27/4/20, para 9

67. At the hearing on 28 April 2020, Counsel for the Applicant was asked by the Commission whether his client was still pursuing the application for variation of conditions referred to in paragraph 60 above given the recent legislative amendments. Counsel confirmed that the application was now redundant so it will be dismissed.
68. Section 3 of the 2019 Act now refers to primary and secondary purposes however, these are similar in effect to the “primary and further objects” under section 3 of the 1978 Act.
69. Section 51 of the 2019 Act, like section 6B of the 1978 Act imposes an onus on the Applicant to satisfy the Commission that issuing the licence or authority is in the public interest. However section 51(1)(b) of the 2019 Act now also requires an applicant to satisfy the Commission that issuing the licence “Will not have a significant adverse impact on the community”.
70. Section 49(1)(b) and (c) of the 2019 Act are in similar terms to section 51(1). Section 49(2) of the 2019 Act now lists the objectives the Commission must consider, whereas section 6(2) of the 1978 Act referred to “criteria”. The only practical differences between the list of matters that the Commission is required to consider is the inclusion of an additional objective s49(2)(e) “increasing cultural, recreational, employment or tourism benefits for the local community area”; and whereas the section 6(2)(o) criteria in the 1978 Act required; “any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour; the section 49(2)(j) objective is now expressed as “reducing or limiting increases in anti-social behaviour”.
71. Counsel for the Applicant has submitted that the objective “is now to ‘reduce or limit increases’ as opposed to ‘will not increase’³⁵. The Commission does not agree with that interpretation. Having regard to the findings and recommendations of the Riley Review it is inconceivable that the legislature would have been prepared to condone existing levels of alcohol fuelled anti-social behaviour. In our view section 49(2)(j) should be given the broader available construction to mean “reducing anti-social behaviour or limiting anti-social behaviour” rather than “reducing increases in anti-social behaviour or limiting increases in anti-social behaviour”. That is the construction more supportive of the purposes of the Act. Moreover, the construction contended for by Counsel for the Applicant would give the “limiting” leg of the objective no work to do, as reducing an increase and limiting an increase in something are, in effect, the same thing.
72. Counsel for the applicant also submitted that:
“It would seem Parliament has chosen to disregard the criteria of density, which according to the Final Report, is a concept involving both outlet numbers and sales volume from each outlet, and replace density with two distinct concepts of ratio in section 49(3)(g) and volume effect in section 49(3)(h)”³⁶.

³⁵ Applicant’s closing submissions, 27/04/20, para 22(c)(ii)

³⁶ Applicant’s closing submissions, 27/04/20, para 51

Although initially attractive, the Commission cannot accept that construction of the 2019 Act. We do not believe that because “density” was expressly adverted to in the 1978 Act and not in the 2019 Act necessarily implies that the legislature intended to depart from the Riley Review recommendation 2.6.1 that “The Liquor Act provide that density **(however described)** is a matter to be taken into account when considering the public interest and community impact” (emphasis added). In our view density has been retained and is covered by the combination of “ratio” in section 49(3)(g) and “the effect of the volume of liquor sales in section 49(3)(h). It is also relevant that the Community Impact Assessment Guidelines still refer to the concept of “density”.

Preliminary Issues for Determination

73. A number of legal issues arose during the course of this hearing which have been largely resolved by the fact that this application is now to be determined under the 2019 Act as amended. The administrative action of the Director of Liquor Licensing in reissuing Liquor Licence number FLL1055 in the name of Endeavour Group Pty Ltd on 3 March 2020 to alter the specified premises from Oasis Shopping Village to “to be advised” has also resolved the concerns the Commission previously held over issuing more than one licence over the same premises. The one remaining issue that has been raised by the Police and AHA NT as an impediment to the application is the lack of any existing premises to substitute.
74. In paragraph 42 of their written submissions, the AHA NT submitted:
- “For a substitution to occur you need something to substitute as you cannot substitute nothing. You need a thing to substitute in this case a premise”³⁷. The related submission that section 46A(1) of the 1978 Act created a requirement that the original premises must be specified in the licence in order for a substitution to occur is no longer relevant because the words “for the premises specified in the licence held by the licensee” in section 46A(1) of the 1978 Act have not been reproduced in section 75(2) of the 2019 Act.
75. Despite the recent amendment of section 75 of the 2019 Act, there remains some tension between the concept of a “substitution” of non-existent premises and section 85(2) of the 2019 Act which provides:

“A licence remains in force until it expires or is abandoned, surrendered, suspended or cancelled”.

If it is a condition precedent to a substitution application that the old premises be in existence at the time then it would not be possible to substitute new premises for premises which have been destroyed by fire. Such a result could not have been intended by the legislature because those situations, where through no fault of a licensee, its premises cease to exist are some of the most compelling reasons why a licensee should be able to seek a substitution of premises.

³⁷ Hospitality NT Submissions, 27/08/20

76. In our view, as the licence has not been abandoned, surrendered, suspended or cancelled “it remains in force and is capable of being amended to substitute other premises for the licensed premises in accordance with section 75(2) of the 2019 Act”.

77. As the Commission has previously stated³⁸:

In this regard, in *Woolworths Ltd v Director of Liquor Licensing*³⁹ Buss JA (with Martin CJ and Murphy JA agreeing) described the function of the Western Australian equivalent of the Commission in determining an application for a license in the following terms:

“... the Commission was obliged to determine the appellant’s application in accordance with the evidence (including notorious facts) before it and the criteria imposed by the Act. This statutory duty involves two aspects. First, the Commission must evaluate the evidence before it and make findings and draw conclusions from the evidence, including by inference. An inference is an affirmative conclusion which arises from facts that have been established. Of course, the Commission’s fact-finding task extends to the making of findings and the drawing of conclusions, wholly or partly, from notorious facts. Secondly, the Commission must apply the public interest criterion, as I have explained it, to the relevant circumstances, in particular, the findings it has made and the conclusions it has drawn. The Commission was required to undertake the statutory duty by reference to the issues which arose from the application in the context of the relevant provisions of the Act, the evidence (including notorious facts) before the Commission and any submissions made by the appellant, the Director and the Objectors.”

The above statement sets out the importance of a structured approach to the discharge of the Commission’s function. As a result, the Commission is satisfied that the approach to be taken is as follows:

- a. Firstly, to “evaluate the evidence before it and make findings and draw conclusions from the evidence, including by inference” (and by) “making of findings and the drawing of conclusions, wholly or partly, from notorious facts” which are material to the discharge of its function. In undertaking these tasks, the Commission must have in mind – and assess relevance by reference to – how it must apply these findings and conclusions in order to discharge its function;
- b. This requires making findings and drawing conclusions about, generally speaking:
 - i. The relevant facts. This requires findings as to the current social and economic conditions in the relevant areas, including, for example, identifying the relevant demographics, present degree of harm from alcohol, the at-risk communities, and the present condition of the market for takeaway liquor in the relevant community and any identifiable trends. The Commission’s knowledge of notorious facts

³⁸ Darwin Dan Murphy’s Decision Notice, para 58 and 59

³⁹ [2013] WASCA 227; (2013) 45 WAR 446 at [55]

and expert evidence is relevant to assist with this factual inquiry, e.g., as to social and economic facts and statistics and as to trends.

- ii. The likely position if the application is refused. This is a predictive assessment based on the facts as found, the Commission's own experience and the expert evidence.
- iii. The likely position if the application is granted. This too is a predictive assessment based on the facts as found in (a) above, evidence as to what Woolworths is proposing, the Commission's own experience and the expert and other evidence about the likely impact if the application is allowed.

- c. Secondly, the Commission must then discharge the various mandatory obligations under section 6 and then, having regard to those outcomes and to the objects of the Act, decide whether it has been satisfied that the approval of the application will advance the public interest by advancing the objects in sections 3(1) and (2) of the Act.

78. There are significant differences between this case and the situation with Woolworths' Dan Murphy's substitution application. In that case Woolworths was proposing to move the licence from its poorest performing outlet to create the Northern Territory's largest packaged liquor outlet on a greenfield site. The Commission was therefore required, in effect, to make a prediction on the basis of the available evidence whether the introduction of a new liquor outlet of the scale proposed would have a significant adverse impact on the local community. In the current case, Coles/Liquorland is proposing to substitute a non-operational store licence it has purchased to premises which had, until recently, been operating as a supermarket bottle shop for twenty years. Whilst the Commission will need to consider any recent changes to the demographical profile of the local community and any changes to the proposed mode of operation of the Liquorland store compared to that of the former BWS outlet, the past impact of the previous bottle shop on the amenity of the local community will be highly relevant to our assessment of the merits of this application. The level of prognostication required in the Dan Murphy's application will not be necessary in this case. Indeed it was submitted by the Applicant⁴⁰:

"it is a critical feature of this case that the impact of this liquor outlet can be predicted with precision, given that BWS operated a practically identical store from the same premises for the 20 years from 1997 to 2017".

Assessment of the application

Purposes of the Act

79. Section 3 of the 2019 Act now refers to the primary purpose and the secondary purposes of the Act rather the primary objects and further objects of the 1978 Act. Section 3 now provides:

⁴⁰ Applicants Submissions, 20/08/19, para 3

3 Purposes

- (1) *The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.*
- (2) *The secondary purposes of this Act are:*
 - (a) *to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor; and*
 - (b) *to regulate the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory; and*
 - (c) *to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and*
 - (d) *to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.*
- (3) *To achieve its purposes this Act:*
 - (a) *regulates the sale, supply, service, promotion and consumption of liquor; and*
 - (b) *prohibits certain products and activities in relation to the sale, supply, service, promotion and consumption of liquor; and*
 - (c) *provides for the appointment of persons to administer and enforce compliance with this Act; and*
 - (d) *establishes offences and processes to enforce compliance with this Act.*
- (4) *A person exercising a power or performing a function under this Act must have regard to the primary and secondary purposes of this Act and must exercise the power and perform the function in a way consistent with those purposes.*

80. Section 49(1) of the 2019 Act provides:

49 Public interest and community impact

- (1) *The Commission may only issue a licence or an authority if satisfied that:*
 - (a) *the applicant is a fit and proper person; and*
 - (b) *issuing the licence or authority is in the public interest; and*
 - (c) *the licence or authority will not have a significant adverse impact on the community.*

There has been no suggestion that the Applicant is not a fit and proper person to hold a licence, so, in so far as section 49(1)(a) is relevant to this application, the Commission is satisfied that the Applicant which holds numerous licences in the Northern Territory meets this requirement.

81. The Commission is required to consider the section 49(2) objectives in determining whether the Applicant has satisfied us that granting the application is in the public interest and the matters listed in section 49(3) in determining that it will also not have a significant adverse impact on the community (as required by section 51).
82. Section 49(2) requires the Commission in determining whether granting this application is in the public interest to consider how it would advance the following objectives:
- (a) *minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;*
 - (b) *ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;*
 - (c) *safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;*
 - (d) *protecting the safety, health and welfare of people who use licensed premises;*
 - (e) *increasing cultural, recreational, employment or tourism benefits for the local community area;*
 - (f) *promoting compliance with this Act and other relevant laws of the Territory;*
 - (g) *ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;*
 - (h) *preventing the giving of credit in sales of liquor to people;*
 - (i) *preventing practices that encourage irresponsible drinking;*
 - (j) *reducing or limiting increases in anti-social behaviour.*
83. In the letter from Ward Keller Solicitors dated 10 July 2018 in support of its client's application, extensive submissions were made in relation to the public interest criteria listed in section 6(2) of the 1978 Act, the following of which are relevant to the 2019 Act's section 49(2) objectives⁴¹:

“1. Harm or ill-health caused to people, or to a group of people, by the consumption of liquor is to be minimised⁴²

The proposed Liquorland store, will like other Liquorland stores be:

⁴¹ Exhibit 1, p7

⁴² S49(2)(a) of 2019 Act

- a. positioned adjacent to the Coles supermarket located in the Oasis Shopping Village; and
- b. aimed at servicing Coles supermarket customers and other traders in the Oasis Shopping Village who wish to purchase liquor conveniently and usually as part of a grocery shop.

The proposed Liquorland store will, like all Liquorland stores have a narrower product range than many other liquor stores. For example, Liquorland stores hold, on average 1,300 lines of stock (or SKU) whereas other liquor stores typically carry up to 2,600 SKU.

The range of liquor carried by a typical Liquorland store can be divided approximately as follows:

- a. Wine – 58%
- b. Ready to Drink products – 13%
- c. Spirits – 19%; and
- d. Beer – 10%.

The range of liquor carried by each store is based on Liquorland’s usual (core) product range; however the Manager of each store has discretion to adjust the range to meet local consumer demand or to comply with voluntary or imposed restrictions. This discretion will be allowed to the Manager for the proposed Liquorland store so as to allow the Manager to adjust the stock to:

- i. meet changing consumer requirements; and
- ii. limit the availability of certain product ranges if those product ranges are seen to be causing harm to the community.

In accordance with the anticipated licence conditions, Liquorland will continue to maintain a reasonable range and stock of stock drinks, fruit juices and groceries to the satisfaction of the Liquor Commission.

Liquorland does not expect that the opening of the proposed Liquorland store will lead to an increase in the sale and consumption of liquor in the Palmerston area. This is further supported by the enclosed Social Impact Assessment report prepared by Bodhi Alliance and given the store will be replacing the existing BWS store. In fact, it is Liquorland’s experience that when new packaged liquor outlets open, other outlets generally experience a decrease in sales (kindly refer to page 8 of the Bodhi Alliance Report).

2. Liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner⁴³:

Liquorland is aware of its obligations under the Responsible Service of Alcohol program including, its responsible supply and promotion of alcohol obligations.

Liquorland is committed to meeting these obligations and is vigilant in ensuring all Liquorland stores are operating accordingly.

⁴³ S49(2)(b) of 2019 Act

Liquorland's team members are required to undertake Liquorland's Induction Training ("the Induction Program") as well as the Responsible Service of Alcohol (RSA) course.

The Induction Program covers topics such as (relevantly):

- a. company policies, including compliance with liquor licensing requirements; and
- b. responsibilities regarding licensing legislation, including the responsible service of alcohol, signage requirements and other essential licensing requirements.

Upon the successful completion of the Induction Program team members are required to confirm in writing that they understand their obligations to comply with liquor licensing laws and that a breach of these obligations could result in their dismissal from employment.

Further, Liquorland employs team members who are dedicated to working for/at Liquorland rather than sharing team members with Coles Supermarket. Liquorland's employees are generally of a more mature age and personality such that they are confident in refusing service to persons who are intoxicated or who are purchasing alcohol for the purpose of secondary supply to friends/family who are not able to purchase liquor for themselves (due to being intoxicated or on the Banned Drinkers Register).

Liquorland strictly enforces its obligation which:

- a. require each person making a purchase to be checked against the Banned Drinkers Register; and
- b. prohibit the sale of liquor to any person who cannot prove that they are above 18 years of age.

Team members at all stores regularly conduct "ID25 checks". Requiring anyone who appears to be 26 years or younger to be asked for proof of age.

There is signage displayed at all Liquorland stores which informs customers about ID25 checks and that it is an offence to purchase liquor to supply to a minor. This signage will be installed at the proposed Liquorland store.

Team members are assisted in complying with their legislative obligations by Liquorland's ID25 software prompt system to remind team members to check ID at the beginning of each transaction and a proof-of-age ready reckoner, which is a colourful visual guide to help team members to quickly calculate proof of age.

Further, during their employment with Liquorland team members are required to complete training on the following topics (relevantly):

- a. dealing with aggressive customers;
- b. armed hold-ups;
- c. controlling store loss and security;
- d. the likely indicators of someone being intoxicated;
- e. 'at risk' groups and harm minimisation (commonly referred to as Liquorland's Indigenous Training program); and

- f. product knowledge.

Liquorland issues regular communications and updates to its stores to ensure that Liquorland team members fully understand their obligations and Liquorland's policies. Reminders to team members' obligations to comply with liquor licensing laws are provided by:

- a. a quarterly compliance update for all team members which reminds them of their obligations in respect of the sale of liquor;
- b. an online training program; and
- c. licensing and compliance manual, guidelines, audit checklists and customer service and management procedures, which are available for all team members via an intranet.

A complete list of responsible service of alcohol training initiatives and harm minimisation strategies was enclosed.

3. Public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises⁴⁴

The proposed Liquorland store will not permit the consumption of liquor on the premises.

As is standard with collocated convenient liquor stores, the proposed Liquorland store will adjoin the Coles Supermarket, It will have an entrance located near the Coles Supermarket's checkouts, allowing customers direct access from the supermarket to the store, as well as a separate entrance from within the shopping centre.

The proposed Liquorland store will be operated by Liquorland (Australia) Pty Ltd as part of its national chain of Liquorland stores. The proposed Liquorland store will be similar to, and have the following facilities common to, Liquorland stores:

- a. a good selection of beers, wine and spirits available at competitive prices;
- b. a cool room with glass door access for the storage and selection of cold beers, wine and ciders;
- c. shelving, as used by all Liquorland stores, will line the walls and carry a comprehensive range of products;
- d. display units, including Liquorland advertised specials, will be located within the floor display area;
- e. the fit out will be customer friendly, designed to allow for easy browsing and selection of purchases;
- f. cash registers to accept purchases, with EFTPOS and all major credit card facilities and subject to the customer complying with the Banned Drinker (sic) Register requirements; and

⁴⁴ S49(2)(c) of 2019 Act

- g. appropriate team member levels to ensure high quality service at all times, particularly during peak trading periods.

Further, the proposed Liquorland store will be fitted out with comprehensive security measures (on top of the security measures already in place within Oasis which include Oasis security personnel patrolling the internal and external area of the Oasis) including:

- a. spirits to be located behind locked glass;
- b. bright lighting throughout the store
- c. EAS Bottle Caps;
- d. an alarm system which is monitored off-site; and
- e. CCTV cameras covering the whole store.

4. The safety, health and welfare of persons who use licensed premises must not be put at risk⁴⁵

Liquorland's team members are trained to constantly supervise the store premises and customers to ensure that licence restrictions regarding consumption areas and container types are complied with.

Liquorland's team members are also trained and required to utilise training in the responsible service of alcohol to safeguard against putting the safety, health and welfare of Liquorland customers at risk. Specifically, Liquorland has given careful consideration to the location of the proposed Liquorland store within Oasis, the location of the proposed Liquorland store within the locality and Bodhi Alliance has taken into consideration the history of the location given, the proposed Liquorland store was used as a liquor store for some 20 years prior to BWS vacating the premises in June 2017.

A licensee must comply with provision of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:

- i. **By-laws made under the Local Government Act; and**
- ii. **Provisions of or under the Planning Act⁴⁶**

Liquorland has a longstanding history of complying with the Liquor Act and other state and local government laws concerning licensed premises and will continue to comply with its obligations.

5. Each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business⁴⁷

⁴⁵ S49(2)(d) of 2019 Act

⁴⁶ S49(2)(f) of 2019 Act

⁴⁷ S49(2)(g) of 2019 Act

All current Northern Territory team members of Liquorland have completed the Responsible Service of Alcohol course together with the following:

- a) Dealing with aggressive customers;
- b) Armed hold-ups;
- c) Controlling store loss and security;
- d) The likely indicators of someone being intoxicated;
- e) 'at-risk' groups and harm minimisation (Cultural Awareness Training); and
- f) Product knowledge.

Any new team members employed for the proposed Liquorland store will also be required to complete the said courses too.

6. The use of credit in the sale of liquor must be controlled⁴⁸

Liquorland does not offer store credit for any transaction.

7. Practices which encourage irresponsible drinking must be prohibited⁴⁹

Liquorland has established a strong culture of compliance, education and training, and Liquorland does not promote the irresponsible consumption of alcohol in any way.

Liquorland is a signatory to Drinkwise and participates in Drinkwise programmes. As a sign of its commitment to Drinkwise initiatives, Liquorland's private label has the Drinkwise pregnancy logo and its advertising material and information carries various Drinkwise messaging.

Liquorland is also a signatory to the Alcohol Beverages Advertising Code (ABAC) and its Responsible Alcohol Marketing Code. ABAC vets all major Liquorland campaigns to ensure they meet the guidelines and meet community standards."

84. On the basis of those submissions and the evidence before us, the Commission is satisfied that the application supports the advancement of the following section 49(2) objectives - (b), (d), (f), (g), (h), and (i).

85. The Applicant's counsel in his written submissions of 20 August 2019⁵⁰ made the following submissions regarding what is now covered by objective 49(2)(e):

60. In relation to cultural, recreational, employment or tourism benefits, please see the following passages from Marie Verschuer 1:

- (a) The retail catchment of the Store includes the population of the City of Palmerston LGA and the secondary catchment of the rural residential areas of Virginia, Howard Springs and Humpty Doo. Market data available from the Coles supermarkets located in the Palmerston Shopping Centre and the Oasis Shopping Village provides further understanding of the demand and shopping

⁴⁸ S49(2)(h) of 2019 Act

⁴⁹ S49(2)(i) of 2019 Act

⁵⁰ Applicants Submissions, 20/08/29, paras 60-61

preferences of the catchment population showing a strong market share in the more affluent newer suburbs. (p.7);

- (b) Evidence from other shopping centres and supporting local opinion is the Oasis centre would benefit from the inclusion of the store, as it would assist in attracting customers to the Centre. This increased visitation of the Centre would support other businesses within it and the overall viability of the Centre. What has been shown by the existence of the Coles supermarket in both shopping centres is there is demand for the additional service (p.29);
- (c) [the proposed store] ...will provide a complementary service to other traders particularly the new Coles and will enable the local shoppers to access most of their daily shopping needs without going elsewhere. This will potentially generate higher visitation of the Centre and will assist to support businesses and employment opportunities within it, not just from the Store but all businesses within the centre. (p.31).

61. In relation to public interest and how the outlet will benefit the broader community, please see the following passages from Marie Verschuer 1:

- (a) The additional service will assist to minimise economic leakage outside Palmerston, including online businesses. Retaining economic activity within the city will assist employment self-sufficiency and support local business which in turn builds stronger more connected and resilient communities. (p.29);
- (b) Potential community benefits of the Store include:
 - increased shopper choice of shopping centre with supermarket and collocated liquor store - this is relevant given the Oasis centre being a smaller more easily accessible centre than either Gateways or Palmerston shopping centres;
 - increased convenience for those seeking to purchase alcohol as part of a shopping trip;
 - reallocation of an existing licence from a former corner store configuration to a safer standalone store serving the needs of a growing population;
 - increased Centre visitation to support existing businesses and local employment;
 - direct employment 8 team members all up with 2 full time and, 2 part time and 4 casual; and
 - less crowding at peak times at the existing Liquorland store to support service and store safety. (p.45).

86. Having given careful consideration to those submissions it is still difficult to understand the motivation behind Coles' decision to establish a second supermarket in the Palmerston CBD within 300 metres of its original store. Although that decision brought benefits in the form of rent to the owner of Oasis Shopping Centre and wages to the workers employed at the new store, it is not clear, on the evidence before us what benefits the local community would derive from Coles establishing another supermarket within an older smaller complex so close to its existing store. Ms Morley, the store Manager acknowledged that Coles Oasis was trading below

“expectations”⁵¹ and suggested that grocery sales would increase by 5% if a licence was granted⁵² However Coles knew, or ought to have appreciated that there was no guarantee of it securing a new store licence in respect of the former BWS premises.

87. The meaningless statement by Ms Verschuer⁵³:

“What has been shown by the existence of the Coles Supermarket in both shopping centres is there is demand for the additional service”

is unfortunately typical of many of the generalised assumptions within her report which are unsupported by any objective evidence. The Commission does accept that there would be a direct employment benefit through the grant of the application in the form of two full time employees. Ms Verschuer also suggested that there would be an additional 2 part-time and 4 casual positions involved with the “team”⁵⁴ however no details were provided of the actual hours involved. Given the modest level of sales predicted by Mr Stephens of \$2.2million which he considered “was a fairly ordinary turnover for a Coles Liquorland in the Territory”⁵⁵ we are not satisfied on the evidence before us that there would be any significant level of additional employment over and above the two full time employees.

88. In Counsel for the Applicant’s written submissions at paragraph 61(b) it was submitted that an additional benefit was the “reallocation of an existing licence from a former corner store to a safer standalone store.” That submission is afforded little weight. As we have previously observed, the old Berrimah store has not traded for 10 years and as such would have been caught by the provisions of section 67 of the 2019 Act and most likely cancelled as an abandoned licence earlier this year.

89. Whilst the Commission concedes that increased consumer choice and convenience are legitimate benefits for the local community, those considerations would carry much more weight if the licence was proposed in respect of premises being established in an area where there were not already an abundance of existing outlets. As we have previously observed, in this case there is another Coles Supermarket and Liquorland bottle shop within 300 metres of the proposed outlet.

90. The Commission does accept that there are a number of other tenants in the Oasis Shopping Centre who are supportive of the application, hoping that increased patronage at Coles and a Liquorland Oasis will have flow on benefits for their businesses. However, the reality behind the decline in custom at Oasis Shopping Centre was the decision by Woolworths to relocate its store to the new Gateway development. A second Coles store, so close to its other outlet was never going to fully compensate for the loss of Palmerston’s main Woolworths Supermarket. If Mr Stephens’ projected liquor sales for the new store are accurate then its level of liquor sales (on a PAC basis) will be only 25% of those that were achieved by BWS in 2014. The Commission is prepared to accept however, that granting the application

⁵¹ Transcript, p63

⁵² Transcript, p64

⁵³ Exhibit 1, p259

⁵⁴ Exhibit 1, p276

⁵⁵ Transcript, p50

would result in some increase in traffic within Oasis Shopping Centre which could provide limited flow on benefits to the other traders

91. Section 6(2)(o) of the 1978 Act required the Commission to consider the objective that *“any sale of additional liquor due to the grant of a licence or the relocation of restrictive conditions will not increase anti-social behaviour”*. The Applicant’s original submissions of August 2019 contended that the provision was confined to an increase in such behaviour as the result of the sale of additional liquor and in any event it did not apply to substitution applications⁵⁶. Section 75(2) of the 2019 Act makes it clear that the public interest and community impact requirements (which include s49(2)(j)) apply to this application. Furthermore, as previously indicated it is now an objective to reduce anti-social behaviour and that objective is not confined to those cases where there is a causative relationship between the anti-social behaviour and any overall increase in liquor sales. In the applicant’s final written submissions⁵⁷ it acknowledged the relevant change in focus of that section and indicated that it no longer relied on paragraphs 31 and 32 of its August 2019 submissions.
92. The section 49(2) objective (j) is critical to the facts of this case as to a lesser extent is objective (c) *“safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises.”*
93. Superintendent Deutrom is the appropriate officer within the Palmerston Division to assess and provide comment on liquor licence applications from a Police perspective⁵⁸. He has 25 years’ experience across a range of postings within Northern Territory Police Force and noted *“unfortunately many of my policing experiences have seen the real and horrific impacts of alcohol on the broader community of the Northern Territory”*⁵⁹. His evidence before the Commission is detailed in paragraphs 42 to 50 of this Decision Notice. The Commission has also given careful consideration to the Applicant’s submission in respect of the weight that should be attached to his evidence, particularly in relation to the problems identified with the PROMIS data⁶⁰.
94. The Commission finds that the evidence of Superintendent Deutrom detailing the weekly TCG process whereby he tasked Police units *“based on patterns, hot spots and issues including that of ASB”*⁶¹ to be compelling. Arising from that process he had identified the former BWS Oasis as *“an anti-social behaviour hotspot”* which up until its closure *“proved to be problematic for us in the immediate shopping centre and the surrounds including laneways and down the side of Chung Wah Terrace”*⁶². Following the closure of BWS Oasis, Superintendent Deutrom stated *“I have noticed a decrease and almost non-existence of the anti-social behaviour in that locality”*⁶³. The observation was no doubt informed by his responsibility to task his officers

⁵⁶ Applicant’s Submissions 20/08/19, paras 30-32

⁵⁷ Applicant’s Final Submissions, 27/04/20, para 41

⁵⁸ Exhibit 2, para 3

⁵⁹ Exhibit 2, para 2

⁶⁰ Applicant’s Submissions 20/08/19, paras 82-95 and Applicant’s Final Submissions, 27/04/20, para 42-50

⁶¹ Exhibit 2, para 16

⁶² Transcript, p67

⁶³ Transcript, p68

through the TCG process to those areas of greatest need. In our view this is the most reliable evidence we have on the significant reduction of anti-social behaviour at Oasis Shopping Village and the surrounding area following the closure of the packaged liquor outlet at that venue.

95. In paragraphs 44 to 47 of this Decision Notice we refer to the statistical evidence relied upon by Police from its PROMIS database which are indicative of a 47% decrease in the number of incidents attended by Police in the vicinity of Oasis Shopping Village since the closure of the BWS outlet there. Whilst this data tends to support the views of Superintendent Deutrom as we have previously observed there are some shortcomings with the PROMIS data. The overall crime statistics for Palmerston are also not particularly helpful in determining the level of crime or anti-social behaviour associated with this specific venue.

96. The applicant submitted:

“This leads to the final point to be made in respect of the police evidence. Even if there was a decrease in anti-social behaviour and reported police incidents because of the closure of BWS (a conclusion which is not open on the evidence for the reasons explained above), then it is entirely likely that the behaviour and the number of incidents have increased elsewhere in Palmerston. That is, the problems have not disappeared, they have just moved on to other areas”⁶⁴.

The Commission accepts that is a possibility however, the submission overlooks the finite resources available to Police⁶⁵. They are the front line in responding to and deterring anti-social behaviour and alcohol related offending. Their ability to alleviate the consequences of alcohol related anti-social behaviour is impacted not only by the overall numbers of people involved but also by the number of different “hot spot” locations where these incidents are occurring.

97. Furthermore, whilst Superintendent Deutrom was cross-examined by counsel for the applicant about the level of anti-social behaviour at the Palmerston Shopping Village which he said “continued to be a troublesome hot spot”⁶⁶, it was not suggested that the anti-social behaviour that had been occurring around Oasis. BWS had shifted to any other specific location. In particular, he was not asked whether it had followed the relocation of Woolworths and BWS to the Gateway Complex or transferred to the BWS store at Bakewell

98. The Applicant submitted “NT Police has not explained why it is that Oasis Liquorland and the Oasis Shopping Village will not have any immediate control over any anti-social behaviour in and around the shopping centre”⁶⁷. That begs the question; why wasn’t BWS able to control it in the past and why can’t Liquorland control it at Palmerston Shopping Village now? The Applicant also relied on the evidence of

⁶⁴ Applicant’s Submissions 20/08/19, para 93

⁶⁵ Exhibit 2, para 22 and Transcript p68

⁶⁶ Transcript, p70

⁶⁷ Applicant’s Final Submissions, 27/04/20, para 47

Ms Verschuer in relation to the crime prevention through environmental design (CPTED) improvements that had been made to the shopping centre⁶⁸.

99. In her first report at page 32⁶⁹, Ms Verschuer provided the following opinion on Safety and Crime Considerations:

“Safety and Crime Considerations

Crime Prevention Through Environmental Design (CPTED) is a well-researched crime prevention method which has been shown to reduce opportunities for crime and incivility.

The CPTED elements considered are:

- Surveillance - the Store will employ in-store security measures and will have continuous CCTV, monitored and available for 30 days at all times. The site is within the Centre with other uses that are operating during the opening hours of the Store.

The Store counter is well positioned overlooking both entry points with no floor stock between them to enable staff to acknowledge customers as they enter and to view them at all times as they move within the Store. A buzzer at the entry point will alert staff to customer entry and exit.
- Legibility - The internal store layout is uncluttered and easy to navigate upon entry there is a direct line of site to the service counter and down each aisle. Being accessible from both the mail and Coles provides easy access and high visibility.
- Connectivity - the Store being within the Centre building is well connected to other businesses operating in the Centre.
- Territoriality - the premises will be a clearly defined space distinct from the supermarket and other stores this will provide separation and control of the space and will provide an additional deterrent to theft. As a separate entity there is clear responsibility for keeping the space clean and safe. Territoriality is further reinforced by Centre security that patrol within the Centre and the carparks ensuring no loitering on the site.
- Place management - the Store and Centre is in like new condition being fully refurbished. The Store itself will be a new refit and will adjoin the newly fitted Coles in main Centre building. Entry to the Store and movement within it is monitored and external Centre security and Centre cleaners ensure the area is well maintained and clean at all times.
- Vulnerability - the area will be well lit and the area is safe due to being overlooked and active with controlled access. Having two entry points does provide opportunities for customers to avoid situations and evacuate quickly if these arise either outside the Store or inside it.

⁶⁸ Applicant's Submissions 20/08/19, para 91

⁶⁹ Exhibit 1, p90

The Store and the refurbished and expanded Centre will perform significantly better on CPTED principles than the old Centre. The upgrading of the site has improved amenity of the Centre and additional tenancies provides additional activation especially at the front of the Centre where there are now restaurants and fast food providers. The increase in tenancies open until later in evening including dining, the gym and the Store will provide additional after hours activation and site surveillance. Overall as part a refurbished and expanded Centre the Store and site will generally perform well against the CPTED criteria”.

100. In our view, Ms Verschuer’s use of terms such as “Legibility”, “Connectivity” and “Territoriality” did nothing to assist us understand how the layout of the proposed Liquorland store and the security arrangements now in place at the complex are so different from those that existed under Woolworths tenancy that we should be satisfied that it will mitigate the risk of a re-emergence of anti-social behaviour at the site. We assume that CCTV security monitoring was in place when Woolworths was the Oasis tenant so, apart from the refurbishment, which might deter some unruly custom there is no compelling evidence to persuade us that the Liquorland store will operate in a manner significantly different to the way in which the BWS operated previously. We have arrived at this conclusion having had past experience of the risk mitigation strategies employed by both BWS and Liquorland as well as the fact that on our assessment of the evidence in this case, Liquorland has been unable to effectively implement CPTED strategies at its neighbouring Palmerston Shopping Centre outlet which prevent the occurrence of anti-social behaviour in and around that complex.
101. On the evidence before us we consider that it is highly likely that granting this application would result in the Oasis Shopping Village once again becoming a “hot spot” for anti-social behaviour and also create risks to “public order and safety” because of the numbers of people that would be attracted to the premises or an area adjacent to those premises.
102. Section 49(3) of the 2019 Act provides;

49 Public interest and community impact

(3) To determine whether issuing a licence or an authority would have a significant adverse impact on the community, the Commission must consider the following:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;*
- (b) the geographic area that would be affected;*
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;*
- (d) the people or community who would be affected;*
- (e) the effect on culture, recreation, employment and tourism;*

- (f) *the effect on social amenities and public health;*
- (g) *the ratio of existing liquor licences and authorities in the community to the population of the community;*
- (h) *the effect of the volume of liquor sales on the community;*
- (i) *the community impact assessment guidelines issued under section 50;*
- (j) *any other matter prescribed by regulation.*

Significant Adverse Impact

103. The term “significant adverse impact” is not defined within the Act. The Macquarie Dictionary says “significant means important; of consequence”. Significant is also a term used in the phrase “significant probative value”, a statutory element of the admissibility test for coincidence and tendency evidence under the *Evidence (National Uniform Legislation) Act 2011*. The authorities say “Clearly that phrase means more than mere relevance; it refers to the evidence being “important” or “of consequence” (Gjonaj v. The Queen [2018] NTCCA 13 at [33] per Blokland and Hiley JJ and Graham AJ.) In R v O’Brien [2017] NTSC 34 at [25] Grant CJ cited with approval the opinion of Odgers, the learned author, to the effect that the use of “significant” as a qualifier in the context of Uniform Evidence law “connotes something more than mere relevance, but something less than a substantial degree of relevance”. The Commission will proceed on the basis that the term ‘significant adverse impact’ means an adverse impact that is important or of consequence but not necessarily substantial.

Geographic Area/Local Community Area

104. Prior to the hearing commencing the Applicant sought guidance from the Commission as to its preliminary view on what constituted the “community area” in relation to the consideration of the factors listed in s.6(3) of the 1978 Act. The Commission by letter dated 4 July 2019 informed the parties of its initial view that the area within a 5 km radius of the proposed premises would be appropriate. Ms Verschuer in her initial report for the purposes of impact assessment defined the “locality” as the 3 km radius around the subject premises.

105. Mr Stephens defined the main trade area as follows:

- “4.12 On this basis, I have defined a Main Trade Area for the proposed Liquorland at Oasis Shopping Village that outlines my expectation of likely trading patterns for the store. This Main Trade Area is broadly defined as follows: -
- To the North: intersection of Tiger Brennan Drive and Stuart Highway
 - To the East: Stuart Highway
 - To the South: Bellamack
 - To the West: Last housing before wetlands

- 4.13 The Main Trade Area reflects the situation in which Liquorland at Oasis Shopping Village will be serving a relatively localised geographic market, notwithstanding the location in the Palmerston Town Centre.
- 4.14 In considering this, I also note that the trading characteristics of Oasis Shopping Village are very different from that of the Palmerston Shopping Centre and other retail stores in the Palmerston Town Centre. For example, the Oasis Shopping Village has locational features and a retail offer which is best suited to meeting localised convenience shopping needs. In contrast, Palmerston Shopping Centre is a significantly larger centre (see my comment at paragraph 2.4) containing destination retail traders including Target and a mix of specialty shops with a greater focus on “comparison shopping” as opposed to quick convenience shopping visits.
- 4.15 My views on this are confirmed by Coles Flybuys data which show that the share of sales at the Coles supermarket in Palmerston Shopping Centre from beyond a 15-minute drive time is 20% higher than for the Coles supermarket located in Oasis Shopping Village⁷⁰.
106. Mr Stephens’ map 3 at page 14 of his report identifies what he described as the main trade area and this roughly accords with Ms Verschuer’s description of the locality as that area that is within a 3 km radius of the proposed outlet. On the basis of the evidence that was adduced, the Commission has revisited its initial view on the relevant locality and for the purposes of section 49(3)(b) finds that the geographic area which would be affected by the grant of this application would be within a 3 km radius of the proposed outlet.

Level of Harm

107. In October 2017, the Northern Territory’s “Alcohol Policies and Legislation Review” (Riley Review) chaired by former Chief Justice Riley released its report. The recommendations from that report have provided a blue print for the rewrite of the *Liquor Act* and informed a range of other policy decisions aimed at reducing the devastating consequences of alcohol misuse in the Northern Territory. In the Foreword to that report, it was noted:

“There can be no doubt the people of the Northern Territory of Australia have a problem with alcohol. Whilst it can be readily accepted that many people in the Northern Territory do not drink alcohol at all and most of those who do drink alcohol do so responsibly, the fact remains that we have a strong, entrenched and harmful drinking culture. We have a problem that must be addressed.

Regrettably, we hold an unenviable list of firsts. We have the highest per capita consumption of alcohol in Australia. It is amongst the highest in the world. We also have the highest rate of risky alcohol consumption in Australia with 44 per cent of people drinking at a level that puts them at risk of injury or other harms at ‘least once in the past month’, compared with 26 per cent of people nationally. We have the highest death rate due to alcohol of any Australian jurisdiction. We have the country’s highest rates of hospitalisations related to alcohol misuse.

⁷⁰ Ethos Urban Report, paras 4.12-4.15

Forty percent of all road fatalities in the Northern Territory involve an illegal blood alcohol concentration compared with less than 30 per cent in other jurisdictions. Unfortunately, the list goes on.

It is well recognised that the impact of alcohol misuse is not just upon the individual, it extends to their family, friends and acquaintances and to the whole of the community in which that person resides.

As noted in the issues paper, in 2004/5 the total social cost of alcohol in the Northern Territory was estimated to be \$642 million or \$4197 per adult compared with a national cost estimate of \$943 per adult. While the financial costs associated with alcohol misuse are considerable the social costs are much more serious, diverse and often hidden.

We know that alcohol misuse is a substantial contributor to child abuse and neglect. Alcohol is a significant driver of crime, being associated with most assaults and at least 56 per cent of domestic violence incidents. Anecdotally we are informed by health workers and others that there is a high incidence of Foetal Alcohol Spectrum Disorder (FASD) in the Northern Territory. The harms associated with the misuse of alcohol are both manifest and wide-ranging”.

108. It is relevant that the 2004/2005 estimate of the social cost of alcohol in the Northern Territory was reviewed and updated by Menzies School of Health Research and the South Australian Centre for Economic Studies in February 2019. That report indicates that the total social costs of Alcohol in 2015/2016 was now \$1.38 billion which equates to a total estimated impact of \$7,577.94 per adult⁷¹.
109. The Commission has had regard to the material contained in the objections of both Police and City of Palmerston (referred to earlier) detailing the current level of alcohol related harm within the Palmerston Community and to the evidence of Ms Verschuer including the following passages from her March 2019 report⁷².

3. Alcohol Related Crime

3.1 The increase in alcohol related incidents in the NT is considered to be likely consistent with proactive and effective policing initiatives rather than an indicator of increased crime. This effect is well documented where Police targeted crime raises awareness leading to a belief in the community of increased occurrence of the targeted crime.

3.2 the re/introduction of the banned drinkers register, minimum price and additional Police as well as targeted interventions have provided an effective and targeted approach to addressing alcohol related crime and anti-social behaviour and to provide support for those offending. The banned drinkers register and the requirement for identification at the time a purchase provides clear guidance that alcohol is not a standard product but one that needs to be consumed responsibly and that there are community expectations of appropriate use of alcohol and

⁷¹ Smith, J., Whetton, S & d'Abbs, P – “*The Social and economic costs and harms of alcohol consumption in the Northern Territory*”. See also Darwin Dan Murphy’s Decision Notice, para 328

⁷² Exhibit 1, p284-285

behaviour. Further, a significant number of people are self-reporting to the Banned Drinkers Register (BDR).

3.3 In contradiction to the Police findings of increased alcohol related crime over the preceding 12 month period, the Minister has released the following statement based on data from September to December 2018.

“Alcohol-related crime is falling and alcohol-related hospital admissions have reduced significantly – which is evidence to show our plan is working”. Minister Natasha Fyles.

3.4 More specifically, Palmerston experienced a 15.8% annual *decline in alcohol related assaults in 2018*⁷³.

3.5 The NT government recently released data that indicates a reduction in the hospitalisations of 24.5% across the Territory and 44% reduction in alcohol-related assaults in Alice Springs between September and December 2018 compared to the same period in 2017. These figures on reduced harm would suggest that the targeted response provided by NT Police is being effective in reducing harm and that crime in (sic) not increasing but rather is being proactively managed”.

110. The Commission is not aware of the evidence upon which Ms Verschuer based her opinion that the increase in alcohol related incidents in the Northern Territory is “likely consistent with proactive Policing rather than an indicator of increased crime” or that “a significant number of people are self-reporting to the BDR”. However, we are prepared to accept that there have been some encouraging signs that the level of alcohol related harm across the Territory may be starting to decline. The disproportionate level of improvements in Alice Springs compared to Darwin needs to be viewed in the context of the PALI system whereby Police are stationed at all packaged liquor outlets in the town. The 15.8% decline in alcohol related assaults in Palmerston also seems positive however, we have not been provided with any evidence as to whether that decline is part of any ongoing consistent trend.
111. Whilst the Commission accepts that the demographic profile of Palmerston has changed significantly from thirty years ago when it was regarded as a “poor cousin” to Darwin we are not convinced that Palmerston has now become a “bastion of advantage” as compared to the rest of the Territory as Ms Verschuer seems to be suggesting. Although she visited Darwin for three days and had an informal discussion with some Police Officers, she met at one of the stores⁷⁴ she did not engage with stakeholders, such as Government and non-Government social welfare agencies, to get any first hand feedback on the social problems that existed in the area⁷⁵.

⁷³ <https://www.pfes.nt.gov.au?Police/Community-safety/Northern-Territory-crime-statistics/Palmerston.aspx>

⁷⁴ Transcript, p46

⁷⁵ Transcript, p25

112. As we have referred to earlier (paragraph 29), Ms Verschuer’s reliance on the fact that Palmerston has an overall lower proportion of Aboriginal residents than the NT average of 25.5% was misconceived. If she had spoken to some of the local welfare agencies or even examined the demographic data for Darwin suburbs she would have realised that Moulden with its 25.4% Aboriginal population⁷⁶ makes it the suburb within the greater Darwin area with one of the highest, if not the highest proportion of Aboriginal residents. Palmerston is not a homogenous city, as has been noted in the objection by the Palmerston City Council “the Oasis Shopping Centre is located adjacent to suburbs containing some of our most economically disadvantaged members of the community”⁷⁷.
113. The relative affluence of Palmerston does not seem to have prevented the unacceptable level of anti-social behaviour that was associated with Oasis BWS until its closure and is ongoing around the Palmerston Liquorland bottle shop.

Volume

114. The Commission has been provided with data in relation to most of the packaged liquor outlets within the broader area which details the number of litres of liquor measured by pure alcohol content (PAC) supplied by their wholesaler over the period 2014 to 2018. We have also received BDR records for the period 2017 to 2019, which effectively provide a record of the number of individual transactions made at each of these outlets. The applicant has also provided us with details of the projected sales from the proposed Liquorland Oasis. Much of this evidence would be categorised as commercially sensitive and it could be detrimental to the interests of the Applicant and other Licensees if that evidence was referred to in detail within this decision. Accordingly, we will deal with that evidence with a high degree of circumspection.
115. The data provided to the Commission for the “broader area” surrounding the proposed Liquorland store included the packaged outlets in Coolalinga and Howard Springs. Between 2014 and 2018 the total of pure alcohol going to those retailers increased by 2.27%. In relation to those outlets within the Main Trading Area as defined by Mr Stephens for the same period the total volume of pure alcohol decreased by 14.0%. It is however relevant to note that in respect of both lists there was no consistent trend either for an increase or decrease and that in both cases the total PAC supplied in 2016 was higher than it had been in 2014⁷⁸. The Commission has particular concern over the reliability of the 2018 data which does not include any returns for Gateway Select Wine Beer and only includes one quarter of data for BWS Gateway. The significant decline in wholesale supplies from the previous year is unusual and we are reluctant to place too much emphasis on the extent of the apparent decline in 2018 other than to note that there has been a decline in consumption (on the basis of PAC wholesale data) since 2016 which also appears to be confirmed by the BDR data.

⁷⁶ Exhibit 1, p71

⁷⁷ Exhibit 1, p213

⁷⁸ Hospitality NT Submissions, para 10

116. Therefore whilst the Commission accepts that there has been a decline in alcohol consumption in the Northern Territory over the past 10 years in line with a national downward trend, there are such fluctuations in the annual PAC data for the outlets in this locality that would make it unsafe to draw any reliable conclusions on the scale of the decrease in consumption within Palmerston.

Ratio

117. The original Police objection⁷⁹ asserts that the Northern Territory has a high number of licensed establishments proportionate to population, 1 per 400 people. Counsel for the Applicant has responded to that⁸⁰:

“This is considered a high level of density. However, the locality density inclusive of the proposed store would be 0.14 licensed premises per 400 people. This is less than 7 times the average NT density.”

118. It would appear from the footnote that the Police have resorted to “Detective Google” and obtained the total number of all licenses from the NT Licensing website being 655 and simply divided the entire population of the Territory by that number and come up with a factor of 1 in 400. The figure does not differentiate between active and non-active licenses let alone concentrate on packaged liquor outlets. It also does not exclude children from that analysis. It is not helpful.

119. Similarly, Ms Verschuer appears to have embraced this spurious concept of an “average NT density” and used it to suggest that the Palmerston locality has a density 7 times lower than the NT average. There is no explanation as to how she arrived at that figure and whether she only factored in the packaged liquor outlets or counted all the on licensed premises in Palmerston as well. Her assessment is also unhelpful. We would have expected more from an independent researcher.

120. The Riley Review concluded, “The evidence clearly shows density, as defined by the number of outlets and the volume of sales, for a particular geographical area or region are essential considerations in assessing the public interest. In considering density, it is not sufficient to simply look at the number of outlets. A consideration of density must necessarily extend to the volume of alcohol sales of particular categories of licenses”⁸¹.

121. As we observed earlier at paragraph 72 we do not believe that the concept of density has been abandoned in the 2019 Act by the legislature’s use of the term “ratio” in section 49(3)(g) when it is read in conjunction with the section 49(3)(h) factor:

“the effect of the volume of liquor sales on the community”.

⁷⁹ Exhibit 1, p210

⁸⁰ Applicant’s Submissions 20/08/19, para 100(a)

⁸¹ Riley Review, p59

It is not helpful to bundle all different licence categories and authorities together for the purposes of deriving a ratio of total licences per head of population when there is such a wide variety of licences and authorities. Even confining the ratio to particular categories of licence, such as takeaway outlets can be misleading. In the Darwin Dan Murphy's Decision the Commission stated:

“In this matter, the Commission has had the benefit of extensive data on the actual volume of wholesale liquor that has been provided to particular retail outlets within various locations within Darwin. An examination of that data reveals the obvious limitations of any simple outlet count measure of density.

Within the 2 km radius of the site, one of the existing outlets is selling more than ten times as much alcohol as each of its three competitors. In the 5 km zone, one outlet is selling more than 30 times the volume of alcohol sold by some of its smaller competitors. The proposed Dan Murphy's store is projected to sell more than 200 times the amount of alcohol sold by some of the existing liquor stores within this zone. Therefore treating it as just one more outlet for the purposes of density would be misleading”⁸².

122. Using the “Main Trade Area” as defined by Mr Stephens⁸³ and his table I entitled “List of Liquor Competitors” reveal that there are twelve packaged liquor outlets within the geographical area we have accepted for the purposes of assessing community impact. Three of those - Moulden Supermarket, Bottlemart Woodroffe and Grey Supermarket only each have a floor space for liquor sales of 20m². Having regard to their past PAC data records which indicate a turnover of liquor which was less than half of that which has been projected for the Oasis Liquorland we have categorised these in the same terms as Mr Stephens as “small offerings”⁸⁴. Counsel for the Applicant has submitted⁸⁵ that Celebrations Gateway has since closed and should therefore not be included in the number of pre-existing outlets. However, as was pointed out to counsel during oral submissions, the Commission has received an application to substitute new premises within this locality for the former Gateway Premises so it cannot be suggested that licence has been abandoned. We will therefore keep the Celebrations Gateway licence as an existing licence for the purpose of considering the ratio of existing take away licences.
123. Although Ms Verschuer has defined the locality as the area within a 3 km radius of the proposed outlet she has used the population figures for the whole of Palmerston, which whilst understandable is not entirely accurate. Counsel for the Applicant⁸⁶ has extrapolated the current population figure for Palmerston, based on Mr Stephens' report as 38,594 but in calculating the ratio of outlets to a percentage of the population has counted all the outlets in table 1 of the Ethos Urban report even though some of these are clearly outside the locality as defined by Ms Verschuer and Mr Stephens' Main Trade Area. On that basis Counsel for the Applicant has calculated the ratio as .44 outlets per 1,000 inhabitants. Disregarding any uncertainty over the population

⁸² Dan Murphy Decision Notice, para 275 and 276

⁸³ Ethos Urban Report, p14

⁸⁴ Ethos Urban Report, Table 1, p11

⁸⁵ Applicant's Final Submissions, 27/04/20, p11

⁸⁶ Applicant's Final Submissions, 27/04/20, paras 54 and 55

that actually resides within the Verschuer “Locality” and counting all 12 existing outlets produces a ratio of .31 per 1,000 residents within a 3km radius of the proposed new Liquorland Oasis.

124. The applicant submitted⁸⁷ that using the original 5 km radius would see the ratio of .44 rise to .466 outlets per 1,000 if the application is granted. He further submitted “this is below the .5 ratio legislated in some states in the USA and significantly less than the NSW BOSCAR 12 target of .75” We are not sure whether “target” is the appropriate term to describe the outcome of a body of research conducted by the NSW Bureau of Crime Statistics and Research (BOSCAR) in 2015 which produced a report entitled “The effect of liquor licence concentrations in local areas on rates of assault in NSW”⁸⁸. The report which was confined to NSW locations concluded: “As with domestic assault, recorded rates of non-domestic assault increased markedly when the density of hotels exceeded 2 per 1,000 residents or when the packaged liquor concentration level exceeds 0.75 per 1,000 residents “. We do accept however that, leaving aside any consideration of the differing sizes of the stores and the volume of liquor sales, that the ratio of existing packaged liquor outlets to population is not high.
125. From the 2016 Census the population of Palmerston was 33,786. In that same year the PAC data reveals that the packaged liquor retailers received 364,521.58 litres of pure alcohol. On a per capita basis this means that local packaged liquor retailers received wholesale supplies of liquor in that year sufficient to provide 10.7 litres of pure alcohol to every man, woman and child in Palmerston. That is not to suggest that all that liquor was consumed by Palmerston residents. Some of it would have been purchased by residents of the rural area or tourists, and some Palmerston residents no doubt purchase some of their liquor in Darwin or on-line, however it is another way of looking at the capacity of those existing retailers to satisfy the packaged liquor needs of the local community.
126. Using the table provided at page 11 of Ms Verschuer’s Report⁸⁹, in 2016, 32.2% of the Palmerston population were under the age of 19. Whilst it would obviously have been preferable to use the proportion of the population that was under 18 that figure was not available on the material before us. If those Palmerston residents under 19 are removed from the total population count there were 22,907 residents in Palmerston over the age of 19 in 2016. Using that figure as the divider gives a more reliable, although not perfect, picture of the ratio of total alcohol sold through bottle-shops in Palmerston compared to the number of adult residents. On that basis, the packaged liquor retailers in Palmerston in 2016 sold the equivalent of 15.9 litres of pure alcohol for every person over the age of 19.

⁸⁷ Applicant’s Final Submissions, 27/04/20, para 55

⁸⁸ [www:boscar.nsw.gov.au](http://www.boscar.nsw.gov.au)

⁸⁹ Exhibit 1, p69

127. It is also very important to bear in mind that the pure alcohol quantities referred to above only relate to liquor products purchased from takeaway outlets, they do not include quantities of liquor consumed on premises such as bars, restaurants and licensed clubs or liquor purchased interstate by mail order. Therefore the total quantity of liquor sold within Palmerston (on a PAC basis) would be higher than the figures referred to above.
128. The World Health Organisation (“WHO”) has assessed the total annual alcohol consumption of Australians over the age of 15 in 2016 as 10.6 litres pure alcohol, down from 12.5 litres in 2011. That figure relates to a slightly different age group and was also adjusted “for tourist consumption”⁹⁰.

The Commission is certainly not suggesting that the evidence accurately establishes that the people of Palmerston were consuming alcohol in 2016 at a ratio 50% more than that of the rest of Australia. We are satisfied however that the local packaged liquor retailers, despite the relatively low ratio of number of outlets to population, were selling a quantity of liquor that was significantly higher than would be required to accommodate the average level of Australian consumption. From that perspective density, measured by the capacity of existing retailers to satisfy the needs of consumers would be regarded as high⁹¹.

129. In the Woolworths Dan Murphy decision the Commission observed

Dr Michael Livingston, one of the preeminent international researchers into the relationship between the availability of alcohol and alcohol-related harm, provided evidence to the Commission in the form of an affidavit. He referred to the research which had been accepted by the Riley Review in reaching its conclusion that increasing density of takeaway outlets leads to an increase in harm and said⁹²

“5.3 Thus, while increasing availability has been shown to be linked to increases in harm, this association does not seem to be driven by changes in consumption across the whole population. Instead, it may be that expanding alcohol availability affects the consumption of only a small number of marginalised heavy drinkers, while the impact on the majority of the population is limited”.

On being advised that the Commission would be having regard to the research of Dr Livingston which had been referred to in the Riley Review, the Applicant tendered a report by Dr John Henstridge, a statistician, a dated 4 November 2019 and Counsel Assisting obtained a further report from Dr Livingston dated 12 March 2020 responding to Dr Henstridge’s report.

⁹⁰<https://www.who.int/substanceabuse/publications/globalalcoholreport/profiles/aus.pdf>

⁹¹ Dan Murphy Decision Notice, para 278

⁹² Exhibit 2, p.136, para 5.3:

130. Counsel for the Applicant made the following relevant submissions in relation to this evidence:

“The conclusions expressed in the studies referred to in the Livingston Affidavit are based on the aggregate effect of a group of outlets on a particular region rather than the effect of any particular outlet⁹³.”

As to the Livingston Affidavit, the following observations can be made:

- a. paragraphs 4.1 to 4.3 merely outline the generalised international evidence that the density of packaged outlets contributes to a range of alcohol related harms based on studies of a broad and general nature: paragraph 4.4;
- b. the study at paragraph 4.3.5 found that the effect of outlet density on an area could only be properly predicted when the factors of the unstable poor, the stable wealthy, the immigrant Hispanic and the rural majority were known, but then proceeded to adopt a model which ignore these factors;
- c. the research in paragraphs 4.4 to 4.7 assumes in most cases that increased density means increased availability, which means increased consumption and thus harm: paragraph 4.4;
- d. the “local” evidence referred to in paragraphs 4.4.1 to 4.4.4. appears to be related to Melbourne and Victoria and not the Northern Territory, yet recognise that local data is critical in assessing the likely local effects of changes in alcohol availability: paragraph 4.4.1; and
- e. The studies concerning neighbourhood characteristics, especially those of socio-economically disadvantaged areas, in paragraphs 4.5.1 and 4.5.2 were from USA and Melbourne.

As Dr Henstridge puts at (21) of his report:

“Even if a positive relationship is found between outlet density and harm, the relationship typically explains only a small fraction of the variation in the level of harm observed, suggesting that there are more important local factors that may provide a fuller explanation for the variations in harm. Hence, if the studies and their models have a domain where they can usefully drive decisions, it is at the highest policy levels and not at the level of individual stores or localities”.

In the final sentence of paragraph 5.3, Dr Livingston says, “it may be that expanding alcohol availability affects the consumption of only a small number of marginalised or heavy drinkers”. By the use of the word “may” it is clear that Dr Livingston is conjecturing by offering a possible explanation for the casual mechanism between availability and harm. As Dr Livingston readily acknowledges, he is not there

⁹³ Henstridge Report at (7(a))

expressing an opinion that this relationship in fact exists, but is merely offering a “potential explanation” and “tentative hypothesis”. Dr Livingston agrees that the evidence in support is “relatively limited” and seems to be confined to the Nordic studies based on “major availability changes”. It is noteworthy that he does not take issue with Dr Henstridge’s criticism of the usefulness of these studies.

Dr Henstridge confirms that the conjecture lacks evidence and that the studies referenced in the Livingston Affidavit were not carried out in a manner which enables that conclusion to be drawn.⁹⁴

131. Although the Applicant’s submissions are critical of the fact that Dr Livingston has not provided any sound statistical information from the Northern Territory to support his theory⁹⁵. Dr Livingston acknowledged that his original affidavit provided little NT specific information and said:

“The aim was to present a summary of the relevant evidence to assist in decision making in the Territory and there are no robust studies to draw on. Instead the affidavit summarises a complex literature in an attempt to assess the likely impacts of changes to alcohol availability – the specific local issues relating to the application in question are beyond its scope”⁹⁶.

132. Dr Livingston also relevantly noted⁹⁷ “changes in ease of access to alcohol are likely to have only small impacts on well-resourced drinkers (e.g. those with access to a car), but may have more effect on those who are marginalised or disadvantaged”.
133. In this case, we are not faced with the massive increase in density that would have occurred through the grant of the Dan Murphy’s application so we do not consider it necessary to make a determinative ruling on the basis of the limited evidence before us concerning this issue. We do however find the observations of Dr Livingston referred to above in paragraph 132 persuasive.

The Community Impact Assessment Guidelines

134. The Community Impact Assessment Guidelines have not changed with the introduction of the 2019 Act and continue to have operation by reason of regulation 123 of the Liquor Regulations 2019 (NT). Those Guidelines together with the Public Interest and Community Impact considerations outlined in section 49 need to be read in conjunction with section 50(3) which provides:

“The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.

⁹⁴ Applicant’s Final Submissions, 27/04/20, paras 76, 78, 82, 102 and 103

⁹⁵ Applicant’s Final Submissions, 27/04/20, para 96

⁹⁶ Livingston letter 12/03/20, para 10

⁹⁷ Ibid, para 9

135. The Community Impact Assessment Guidelines provide as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to.

	<p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?

	<ul style="list-style-type: none"> • Will it use existing premises improve or add to existing premises or is it a new premises?
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136. As can be seen from the above, there are a large number of matters that the Commission must consider and there is significant cross over between the matters listed in the Guidelines and the factors we are required to take into account in section 49(3). The Minister in the pre amble to the Guidelines does however make it clear that:

“.....the Commission has the authority to consider a broader range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

137. The Applicant has submitted that the requirement that the Commission consider the Guidelines is now by virtue of section 49(3)(i) confined to the “significant adverse community impact” test in section 49(1)(c)⁹⁸. However the Guidelines still include the criteria:

“Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community”.

If that guideline does not apply to our consideration of the benefits of the proposed licence are we restricted in our consideration of the proposed licence to those listed in section 49(2)(e), namely: “cultural, recreational, employment or tourism benefits” ? We do not believe that is an appropriate construction of the Act and would indeed be contrary to the manner in which the Applicant presented its case to the Commission. Even if that guideline is no longer a mandatory consideration in relation to the public interest objectives, it is very much encapsulated within Purpose 3(2)(c) of the Act : “to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory”. Although it may no longer be mandated we have decided that the considerations listed against the public interest criteria in the Guidelines are a useful guide to the way in which we approach our consideration of the benefits to the community associated with the application. We have therefore also had regard to each of those four questions in the Guidelines against the public interest criteria, in determining whether the application would be to the benefit of the public.

138. The Commission has already had regard to most of the matters outlined in the Guidelines whilst considering the factors we are required to consider under section 49(3). In relation to the requirement that we consider the potential harm to people who might be utilising nearby community facilities such as hospitals, schools and youth facilities we accept the thrust of the Applicant’s submissions that a bottle shop had been operating from the same location for twenty years without any significant impact on the facilities listed in the guidelines. We also take account of the fact that there have been no objections lodged by any of those facilities or members of the public.

⁹⁸ Applicant’s Final Submissions, 27/04/20, para 35

Liquor Consumption

139. The applicant has relied on the evidence of Ms Verschuer⁹⁹ that the residents of the City of Palmerston spend less per household on alcohol than households nationally. She reproduced a graph “sourced from Economy ID” at page 16 of her report which was footnoted <http://www.nier.com.au/>. NIER is the National Institute of Economic and Industry Research which is a private economic research and consulting group based in Melbourne which serves private and public sector clients. There is no explanation in her report as to the methodology that was used by the researchers to conclude that residents of Palmerston were spending significantly less on alcohol than other Australians.
140. Mr Stephens also asserted at page 18 of his report that per capita retail spending on take home liquor for his Main Trade area residents (Palmerston) was 14.1% less than that of Greater Darwin. He also estimated that there was an overall underspend of approximately 14% on other retail items, despite the fact that the median individual income for Palmerston and Greater Darwin were almost identical as was the expenditure on mortgage and rental payments¹⁰⁰. His source was “Ethos Urban with Market info”, Once again there was no explanation as to the methodology which had been used to reach this conclusion.
141. The report relied upon by Ms Verschuer, which puts the level of liquor consumption in Palmerston at a significantly lower level than the rest of Australia is at odds with the findings of the Riley Review that Territorians are consuming alcohol at a rate 18% higher than the rest of Australia¹⁰¹. Both her and Mr Stephens’ opinions are also contrary to other evidence before the Commission. In the Statutory declaration of Superintendent Deutrom¹⁰² he deposed:
- “Takeaway liquor sales for the Palmerston area in May 2019 alone were 84,110 sales or 17.69% of the total NT sales of 475,501. This data was obtained by interrogating information available on the BDR.”
- Using the 2016 census data replicated in Ms Verschuer’s report¹⁰³, Palmerston’s population was 14.8% of the NT population. Accordingly on that analysis there were slightly more takeaway transactions in Palmerston compared to the rest of the Territory.
142. Although it might be argued that the BDR records do not detail the amount of liquor that was purchased in these transactions we also have the evidence referred to in paragraphs 123 and 124 in relation to the 2016 total PAC supplies in Palmerston. Despite the reservations we have expressed in relation to that startling figure, it is based on objective evidence. Although we didn’t have access to the 2019 population figures, there may have been some change in the comparative population data in the 3 years since 2016 so that the increased level of sales in Palmerston compared to Darwin may have narrowed but it certainly does not support the suggestion implicit in

⁹⁹ Verschuer Report, p15, Exhibit 1, p73?

¹⁰⁰ Ethos Urban Report, p15

¹⁰¹ Riley Review, Foreword, p2

¹⁰² Exhibit 2, para 16

¹⁰³ Exhibit 1, p69

the material relied upon by the applicant's experts that Palmerston is some oasis of sobriety compared to Darwin and the rest of the Territory. On all the evidence the Commission finds that the existing level of alcohol consumption within this locality is no less than the average level of consumption for the Northern Territory as a whole.

Crime Statistics

143. We have earlier adverted to the shortcomings of the evidence in relation to the police PROMIS incidents in paragraph 46 and the Commission is well aware of the volatile nature of crime statistics in the Northern Territory. Given our low population base there can be significant fluctuations in the level of particular types of offending both regionally and Territory wide from year to year. Long term trends are required before it can be said with any confidence that any particular strategy has been effective in reducing the incidence of criminal offending. To the extent that the rate at which we imprison our citizens is reflective of the number and seriousness of the offences that have been committed there is no cause for optimism. The Northern Territory's imprisonment rate has steadily increased year on year to 955 prisoners per 100,000 adults compared to an average national rate of 221¹⁰⁴.

144. The Applicant was critical of the police purportedly claiming that there had been an increase in alcohol related offending in Palmerston in 2018 compared to the previous year it said in counsel's August 2019 submissions¹⁰⁵:

"In relation to the objection from NT Police, Liquorland refers to the following passages from Marie Verschuer 2:

(a) 3.3. In contradiction to the Police findings of increased alcohol related crime over the preceding 12 month period, the Minister has released the following statement from September to December 2018:

Alcohol-related crime is falling and alcohol-related hospital admissions have reduced significantly – which is evidence to show our plan is working. "Minister Natasha Fyles February 28 2019".

(b) 3.4 More specifically, Palmerston experienced a 15.8% annual decline in alcohol related assaults in 2018.

145. However, it would appear that the police objection letter in referring to "Demand for NTPF services" was relying on its PROMIS incident report on a financial year to date basis. The Minister's press release was based on the published crime statistics for September to December 2018 and the 15.8% annual decline in alcohol related assaults for Palmerston would appear to come from the official published crime statistics but relate to the 2018 calendar year. In any event Superintendent Deutrom in his statutory declaration at paragraphs 11 and 12 confirms that there had been a reduction both across the Territory and in Palmerston of total incidents and alcohol related incidents from the 2017/2018 to the 2018/2019 financial years. However,

¹⁰⁴ ABS Prisoners in Australia 2018

¹⁰⁵ Applicant's Submissions 20/08/19, para 98 a and b

relevantly the reduction in the level of alcohol related incidents recorded in PROMIS for Palmerston on the more up to date financial year basis was less than 5% (7,202 down to 6,913).

146. The Commission accepts that there are grounds for cautious optimism that alcohol related crime rates may be starting to decline across the Northern Territory however they are still significantly higher than elsewhere in Australia and we do not accept that Palmerston is immune from this type of offending.

Conclusion

147. The Commission has found that granting this application would marginally increase the density and or ratio of packaged liquor outlets in the locality. We are not convinced on the evidence that has been adduced by the Applicant that Palmerston residents are consuming alcohol at a significantly lower rate than the rest of the Northern Territory. We find that the harmful consequences of Alcohol that were identified in the Menzies School of Health Research Report "*The social and economic costs and harms of alcohol consumption in the Northern Territory*" apply to Palmerston. However, we do not find that granting this application would arrest the ongoing National and Territory wide declining trend in alcohol consumption.
148. We accept that there would be economic benefits through the creation of at least two full time shop assistant positions within the proposed liquor store and limited flow on economic benefits to the other store holders in the Oasis complex through increased foot traffic. We have also taken into account the fact that existing premises will be used for the proposed liquor store so there will be little in the way of associated benefits for the construction industry. The applicant has submitted the benefits will include:

"Enhancing the convenience and time saving to the grocery shoppers at Oasis Shopping Village by being able to do all their shopping in one place,"¹⁰⁶

However we are mindful of section 50(3) of the 2019 Act which provides:

50 Community impact assessment guidelines

(3) *The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community.*

149. If this was an application associated with a proposal to establish a new Coles Supermarket in a new suburban development then we would accept that despite section 50(3) there would be obvious consumer benefits in having a one stop shopping experience close to home. However, there already is a Coles/Liquorland option for consumers within 237 metres of the Oasis store. There is no compelling evidence before us to suggest that consumers who want to do their shopping at the one location cannot achieve this by attending the Palmerston Shopping Centre Coles/Liquorland store. If they are not happy with Coles then they can attend either of the Woolworths/BWS stores at Gateway or Bakewell. In the objections lodged by both Police and the Palmerston Council, they each point out that there has been positive community feedback about having the option of shopping for groceries at a

¹⁰⁶ Applicant's Submissions 20/08/19, para 121(b)

complex that does not have a liquor outlet. If the Applicant wanted to dispute that evidence, it could have conducted an objective market survey to gauge the views of its customers on this issue. We have also taken into account that there will be no additional choice of products for consumers as for example, might have been the case if Coles had decided to open one of its Vintage Cellars outlets at this location. On the evidence before us, we are not persuaded that there are any real benefits for consumers in having another Liquorland so close to the other outlet.

150. On the evidence of Superintendent Deutrom, we find that the former BWS Oasis Liquor store was a significant hot spot for anti-social behaviour both in and around the shopping centre proper, including the adjoining escarpment and laneway. The Police PROMIS incident records support Superintendent Deutrom's evidence but most persuasive in our view was his evidence in relation to the TCG process whereby on a weekly basis he would review crime patterns and "hot spots" within the Palmerston region and task his officers according to his assessment of where the greatest needs arose. He was quite clear in his evidence before the Commission that from the time of his arrival at Palmerston, until it closed that the BWS at Oasis was an anti-social behaviour hotspot and was problematic for police who only had finite resources to deal with this type of activity¹⁰⁷. He said that since the closure of BWS he had "noticed a decrease and almost a non-existence of the anti-social behaviour in that locality"¹⁰⁸. We have referred earlier to the limitations of the PROMIS records and counsel for the Applicant obtained some concessions in that regard from the Superintendent during cross-examination however he was not challenged in relation to his own observations at the store nor the evidence he gave about having to regularly task officers to attend the centre through the TCG process.
151. In the objection of the City of Palmerston it was noted that "Although located within the Central Business District, the Oasis Shopping Centre is located adjacent to suburbs containing some of our most economically disadvantaged members of the community"¹⁰⁹. Similar suggestions were raised with Ms Verschuer by counsel and Commissioners at the hearing, over her evidence that the proposed store would be located in an area of relative affluence. Whatever the reason it is clear that the Oasis BWS attracted a demographic that was prone to anti- social behaviour and required regular police intervention.
152. The Applicant has submitted that the mitigation strategies it would put in place should persuade the Commission that there will be no recurrence of the previous problems associated with the outlet¹¹⁰. Apart from the "refurbishment of the centre and redesigned carpark with improved lighting"¹¹¹ there is nothing in the mitigation strategies that would not have been likely used by Woolworths when it was operating the outlet. No details were provided as to how the redesigned carpark or improved lighting would assist in reducing anti-social behaviour and none of these risk mitigation strategies, including the CPTED improvements raised by Ms Verschuer were put to Superintendent Deutrom for his comment during the hearing. It was clear from his evidence at the hearing that the Superintendent was involved with "proactive

¹⁰⁷ Transcript, p67

¹⁰⁸ Transcript, p68

¹⁰⁹ Exhibit 1, p213

¹¹⁰ Applicant's Submissions 20/08/19, paras 97-99, 103 – 118

¹¹¹ Applicant's Submissions 20/08/19, para 97(c)

preventative” policing measures¹¹² and should have been well placed to offer an opinion on the proposed risk mitigation strategies. It is also telling that Ms Verschuer does not appear to have raised those proposed measures with the police officers she engaged in conversation during her visit to Darwin¹¹³.

153. The Commission accepts that both Coles and Woolworths have good reputations in the Northern Territory for compliance with their obligations under the *Liquor Act* and for their adherence to Responsible Service of Alcohol protocols. However, as the two largest providers of packaged liquor in the Northern Territory, history has unfortunately shown that such measures have limited utility in curbing the harmful consequences of alcohol misuse in our community. We would expect that all of Liquorland’s harm minimisation policies are in operation at its neighbouring Palmerston Shopping Centre store yet Superintendent Deutrom deposed:

“In contrast the Palmerston Shopping Centre where a Liquorland outlet currently exists at Lot 22 Chung Wah Terrace, Palmerston continues to be one of the major ASB hot spots for Palmerston Police. There is frequent ASB, intoxicated persons, regular occurrences of rubbish been strewn around consisting of empty liquor bottles and packaging, graffiti painted on adjoining walls along with the gathering of problem drinkers in public spaces, all of which continue to adversely impact the community amenity. I have previously, and continue to observe this through my reviews of incidents and or personal observations of the shopping centre and surrounding grounds during regular patrols of the area”¹¹⁴.

154. The applicant submitted:

“This leads to the final point to be made in respect of the police evidence. Even if there was a decrease in anti-social behaviour and reported police incidents because of the closure of BWS (a conclusion which is not open on the evidence for the reasons explained above), then it is entirely likely that the behaviour and the number of incidents have increased elsewhere in Palmerston. That is, the problems have not disappeared, they have just moved on to other areas”¹¹⁵.

Whilst it is accepted that those former customers (and their associates) of BWS Oasis who were likely to engage in anti-social behaviour would have converged on another liquor outlet we do not accept that it follows that the level of anti-social behaviour would have remained the same across Palmerston. As will be discussed later, the number and location of liquor outlets is relevant to the capacity of the police to respond to and curb outbreaks of anti-social behaviour.

¹¹² Transcript, p68

¹¹³ Applicant’s Final Submissions, 27/04/20, para 131

¹¹⁴ Statutory Declaration of Superintendent Deutrom, para 19

¹¹⁵ Applicant’s Submissions 20/08/19, para 93

155. Although not defined within the Act we consider that the term “anti-social behaviour” includes but is not limited to conduct which could constitute an offence of offensive or disorderly behaviour. It covers rowdy and threatening behaviour, public swearing, damaging property, public fighting, assault and humbugging. By its nature, anti-social behaviour occurs in public areas and is usually resolved by the attendance of police who arrest or take into protective custody the main protagonists. Their presence also serves to encourage other potential offenders to depart the immediate area and as a deterrent to further anti-social behaviour. It is resource intensive work and Superintendent Deutrom has spoken at length about the finite resources of police¹¹⁶ He said that since the closure of that outlet there has been “almost a non-existence of anti-social behaviour in that locality” and that it was his expectation that if a liquor outlet is reinstated at Oasis Shopping Village there will be “an increase in anti -social behaviour that was there prior to the closure of BWS”¹¹⁷.
156. The Commission finds on the evidence that having regard to its long history of anti-social behaviour associated with the operation of its BWS liquor outlet, that restoring a licence to the Oasis Shopping Village would result in it once again becoming a hot spot for anti-social behaviour. This would impact on the capacity of police to effectively respond to these types of incidents over a greater number of locations and thereby lead to a greater level of anti-social behaviour within the Palmerston locality than currently exists. Having had regard to the existing levels of harm within this community associated with alcohol misuse, the limited benefits that would flow to the community from the creation of this further liquor outlet and having been guided by the Purposes of the Act together with all the objectives specified in section 49(2) the Commission is not satisfied that granting this application is in the public interest.
157. Furthermore the Commission, having been guided by the Purposes of the Act and having had regard to the considerations listed in section 49(3) and the Community Impact Assessment Guidelines, finds that the level of anti-social behaviour that would return to the vicinity of these premises, were the application granted, would be such as to cause undue offence, annoyance, disturbance and inconvenience to members of the community who reside or work nearby. We find it would also result in an increase in the current level of alcohol related crime in the local community. As a result of these findings we are not satisfied (as required by section 5(1)(b)) that granting the application would not have a significant adverse impact on the community.
158. Accordingly, for the reasons outlined in this Decision Notice the Commission has determined to refuse this application.

Notice of Rights

159. Section 31 of the 2019 Act provides for any decision of the Commission for which a decision notice is required under the Act is reviewable by Northern Territory Civil and Administrative Tribunal.

¹¹⁶ Transcript, p67

¹¹⁷ Transcript, p68

160. Section 112(3) of the 2019 Act requires the Commission to give a decision notice to the Applicant and each person who lodged an objection after making a decision under section 112 (2)(b).

A handwritten signature in black ink, appearing to be 'Richard Coates', written in a cursive style.

Richard Coates
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
3 July 2020

On behalf of Commissioners Coates, Reynolds and Hart