

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION FOR SUBSTITUTION OF PREMISES

**LICENCE NUMBER:** FLL1019

**REFERENCE:** LC2019/133

**LICENSEE:** Little Cashy Pty Ltd and Dunstall Pty Ltd

**PROPOSED PREMISES:** Unit 3 / 130 University Parade  
DURACK NT 0830

**APPLICANT:** Little Cashy Pty Ltd and Dunstall Pty Ltd

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

**HEARD BEFORE:** Mr Richard Coates (Chairperson)  
Mr Bernard Dwyer (Health Member)  
Ms Christine Hart (Community Member)

**DATES OF HEARING:** 29 and 30 July 2020

**DATE OF DECISION:** 5 October 2020

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**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 by Little Cashy Pty Ltd and Dunstall Pty Ltd (“the Applicants”) to amend the licence by substituting other premises in the licence.

**Reasons**

**Background**

2. On 30 July 2019, an application was lodged by DNS Speciality Services on behalf of the Applicants, pursuant to section 46A of the *Liquor Act 1978* (the 1978 Act) for substitution of the premises for their liquor licence FLL1019 with Authority – Liquor Merchant from Gateway Select Wine, Beer and Spirits in the Gateway Shopping Centre, Palmerston to Unit 3/130 University Parade, Durack which is within the Fairway Waters group of shops.

3. Licensing Officers initially assessed the application as incomplete but further documentation was provided and the application was accepted on 8 August 2019.
4. In support of the application, the Applicants provided the following documents:
  1. Affidavit in accordance with Section 46A(1A) of the 1978 Act;
  2. Community Impact Assessment in accordance with section 6.2 of the 1978 Act;
  3. Plans of the proposed premises licensed liquor footprint;
  4. Copy of proposed lease.

## **Publishing of Application**

5. The application was published in the NT News on Wednesday 14 August and Saturday 17 August 2019. A “Green Sign” was also erected at the proposed premises for the 30-day advertising period. A signed declaration that the public notice “Green Sign” had been erected at a prominent area of the proposed premises and displayed for a 30 day period coinciding with the advertisements was supplied and two photographs of the “Green Sign” erected in-situ.
6. As a result of the publication of the application, 24 objections were received.
7. Twenty two objections were received from the public from:
  1. Aine Nowak
  2. Elizabeth Schoch
  3. Gareth Davies
  4. Lance O’Connor
  5. Michael Valladares
  6. Mark Soligo
  7. Deborah and Steven Edgar
  8. Tom Lewis
  9. Joanne Tilbrook
  10. Ken Davidson
  11. Heather Ryan
  12. Jacky Rose
  13. Mike and Judy North
  14. Christine Dinning
  15. Kara Maclean
  16. Michael Maclean
  17. Paul and Jan Schneider
  18. Simon Copley
  19. Ron Rose
  20. Melanie Bowen
  21. Bernadette Weaver
  22. Marion Blackburn

## **Consultation**

8. Notification and comments were sought from:
  - CEO of Department of Health;
  - Commissioner Northern Territory Police;
  - CEO of the City of Palmerston
  - Development Consent Authority (“DCA”)
  - NT Fire & Rescue Service.
9. Two objections were received from stakeholders:
  - Luccio Cercarelli – CEO – City of Palmerston
  - Anthony Deutrom – Superintendent, Palmerston Division – NT Police.
10. The objection from NT Police was received one day after the closing date for the lodgement of objections. A delegate of the Director-General of Licensing approved the acceptance of this objection in accordance with section 127 of the 1978 Act.
11. The Department of Health advised via email dated 14 August 2019 that it is not able to support the application. The reply was not outlined as a formal objection.
12. The NT Fire & Rescue Service replied via email dated 12 August 2019 indicating they support the application provided that relevant building conditions and certifications are provided.
13. DCA replied via email dated 1 August 2019 that the premises does not require approval for change of use.
14. Copies of the objections were forwarded to the Licensee in accordance with section 57G of the 1978 Act on 18 September 2019 and a response to the objections was sought. The Applicants requested multiple extensions of time to submit a response and kept Licensing Officers informed of the progress of the response. This was agreed to on the basis that the application was being delayed at the request of the Applicants. A response was provided on 21 November 2019.

## **Compliance**

15. A check of the records held at Licensing NT reveal no negative compliance history at the premises at Gateway Shopping Centre.

## **Fixing the Matter for Hearing**

16. The Director of Liquor Licensing (“the Director”) referred the matter to the Commission on 16 December 2019.

17. As this matter was originally lodged under the regime provided for by section 46A of the 1978 Act, it would have been subject to the ruling by the Northern Territory Civil and Administrative Tribunal (“NTCAT”), *Woolworths Group Limited v Northern Foundation for Alcohol Research and Education & Ors* Decision<sup>1</sup> that the Commission did not have the power to grant a substitution application subject to conditions.
18. 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 Act which governed substitution applications.
19. The Applicants were given the option of having the matter adjourned so that they could take the benefit of the proposed remedial legislation and decided to adopt that course.
20. The Liquor Amendment Bill 2020 was introduced in the February sittings with a proposed commencement date of late March 2020.
21. 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.*

22. Although this legislative amendment removed a number of potential impediments to the application, by April the nation was confronted with the COVID-19 Pandemic which resulted in the imposition of restrictions in relation to public gatherings. Even when those restrictions were eased within the Northern Territory the number of parties involved presented a problem in securing a suitable venue.

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<sup>1</sup> NTCAT Decision Notice dated 23 December 2019

23. The Commission therefore engaged counsel to assist the Commission with a view to counsel liaising with the unrepresented objectors and the Applicants' legal representatives to resolve any challenge to the validity of the objections. Counsel was also able to assure the objectors that their evidence would be received by the Commission without them necessarily all attending the hearing.
24. Ultimately, the Commission was able to secure an appropriate venue, being one of the Darwin Local Court rooms and the hearing was set down for 29 and 30 July 2020.

## **The Hearing**

25. At the hearing, Ms Mary Chalmers appeared as Counsel Assisting the Commission, Mr Miles Crawley SC appeared for the Applicants, Mr Tom Anderson appeared for both NT Police and Palmerston Council and Mr Jeff Verinder was present on behalf of the Director. The Commission is most appreciative of the assistance provided by all those involved in the matter.
26. At the outset it was made clear that the unrepresented objectors had been invited to put any questions they had to the Applicants' witnesses or any further matters they wanted to raise, through Counsel Assisting. That is what occurred and although Ms Chalmers might have spent a little more time in probing the witness testimony, the hearing was conducted in a more expeditious manner than would have been the case if each of the objectors had sought to cross-examine all of the witnesses. At the conclusion of the hearing the parties were granted leave to file written submissions and that process was completed in mid-September. The Commission is grateful for the cooperative manner in which the objectors and the Applicants approached these proceedings.

## **The Evidence for the Applicant**

27. Counsel Assisting in her submissions provided a useful summary of the evidence:

A hearing brief containing the application and materials in support, the Director-General's referral, the objections and associated correspondence was tendered at the hearing by consent of all parties (Exhibit 1). The documents in support of the application in Exhibit 1 comprised (relevantly):-

- (a) A Community Impact Assessment prepared on behalf of the licensee by Danny Nixon of DNS Specialist Services;
- (b) A document titled to Public Interest Criteria Responses, also by Mr Nixon;
- (c) A site plan of the proposed premises;
- (d) Lease proposal;
- (e) Copies of the notices published by the licensee;
- (f) Licensee's responses to the objections, prepared by their solicitor Mr Richardson of De Silva Hebron.

(Paragraph 21 reproduced - Counsel Assisting Submissions)

28. The following additional documents were tendered at hearing in support of the application:

**Exhibit #    Document**

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|----|---|
| 2  | Documents re. transfer of licence to present licensee               |
| 3  | Map showing location of proposed premises and surrounding areas     |
| 4  | Statement of Mr Justin Coleman (undated)                            |
| 5  | Map prepared by Dr Tom Lewis  |
| 6  | Map showing location of itinerant camps                             |
| 8  | Statement of Stephen Dugan dated 29 Jul 20                          |
| 9  | Bundle of photographs taken by Mr Dugan                             |
| 10 | Petition produced by Applicant and tally sheet                      |
| 12 | Traffic Impact Statement by Bryden Smith of Tonkin, dated 23 Jul 20 |
| 14 | Statement of Wendy Gilpin dated 29 Jul 20                           |
| 15 | Petition produced by Ms Gilpin and tally sheet                      |
| 19 | Statement of Brian McCubbing (undated)                              |
| 21 | Statement of Neville Pantazis dated 29 Jul 20                       |

(Paragraph 22 reproduced - Counsel Assisting Submissions)

29. In addition, oral evidence was heard from Mr Justin Coleman, Mr Stephen Dugan, Mr Bryden Smith, Mr Brian Cubbing and Ms Wendy Gilpin in support of the application.

(Paragraph 23 reproduced - Counsel Assisting Submissions)

## **Proposed Premises and Licence Concept**

30. The premises that the licensee proposes to substitute are located within a suburban shopping village located on the edge of the suburb of Durack in the Palmerston area, known as the Fairway Waters Shopping Centre. The centre is located just off a roundabout at the intersection of three (3) arterial roads including Kirkland Road that feeds outbound traffic off Tiger Brennan Drive into Palmerston, as well as Elrundie and University Avenues. (Paragraph 25 reproduced – Counsel Assisting Submissions).

31. Entry into the shopping centre area is via Hedley Place which is a small service road off the roundabout. The entry and exit at this location is somewhat awkward as vehicles effectively travel through the service station area to get to the other shops. There is a left-only exit onto University Avenue. The Commission heard expert evidence to the effect that this arrangement was not current best practice, but was not unlawful. (Paragraph 26 reproduced – Counsel Assisting Submissions)
32. The shopping centre contains a ‘Coles Express’ service station, Chemist Warehouse, a hairdressing salon (Instyle Hair and Beauty), a chiropractor, a Dominoes takeaway pizza outlet and a standalone pizza restaurant Hungry Joes. A site plan showing the carparking and different shops can be seen in Figure 1 of the expert report (Exhibit 12). (Paragraph 27 reproduced – Counsel Assisting Submissions)
33. Until recently, the centre was apparently home to NT’s last remaining video store – that is now the vacant tenancy sought to be utilised for the bottle shop re-location. The remaining tenancy in the centre has been vacant for some time. (Paragraph 28 reproduced – Counsel Assisting Submissions)
34. The proposed premises is 300 square metres in size and is a larger tenancy compared to the Gateway premises. Mr Coleman’s evidence at the hearing was that excluding the cool room areas (which are public access areas generally), the new premises has approximately 50 square metres extra trading space compared to the old premises<sup>2</sup>. The cool room area is also larger than at Gateway, however Mr Coleman stated that cool room space can be combined public access (trading floorspace) and storage (non-trading floorspace). (Paragraph 29 reproduced – Counsel Assisting Submissions)
35. Carparking is located around the centre and meets planning requirements<sup>3</sup>. The proposal envisages a number of carparks being reserved in front of the tenancy for customers attending the bottle shop. (Paragraph 30 reproduced – Counsel Assisting Submissions)
36. There is a childcare centre located over the road from the centre on Hedley Pl, and as mentioned, the proposed site is adjacent to the suburb of Durack which is a suburb arranged around a golf course, lake and parklands. (Paragraph 31 reproduced – Counsel Assisting Submissions)
37. The suburbs of Driver, Moulden and Gray are also in the vicinity of the proposed premises, as well as the Marlow Lagoon area which encompasses a housing estate as well as recreational parklands. The term ‘family friendly’ is used to describe the area surrounding the centre and in particular the suburb of Durack. A typical description of the area taken from one of the objections<sup>4</sup> reads:-

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<sup>2</sup> Transcript 32.3

<sup>3</sup> Exhibit 12 Figure 1 also shows the carparking arrangements.

<sup>4</sup> Exhibit 1 at p 211-212

*“Durack is a residential area built around the first half of the Palmerston Golf Course. It is thus a pleasant, green suburb with walk/cycle paths and lakes stocked with barramundi so that families can fish there, I frequently see children fishing by themselves, as it is a safe area for outdoor activities. Many people use the walking paths – it is quiet and mainly litter free.”*

(Paragraph 32 reproduced – Counsel Assisting Submissions)

38. The Palmerston CBD is approximately 1.5km away from the centre. (Paragraph 33 reproduced – Counsel Assisting Submissions)
39. As stated above, the current Gateway premises are located approximately 2.5 km away. The Gateway Shopping Centre is on the other side of Roystonea Avenue to Palmerston. It is a large multiplex with on-site security. (Paragraph 34 reproduced – Counsel Assisting Submissions)
40. At the hearing, the applicant outlined for the first time a particular concept for the operation of the licence in the proposed new premises. This was described by Justin Coleman in oral evidence as follows:-

*“It was also our intention to offer a food offering, a boutique food offering that Parap Fine Foods have agreed terms with us to do. So while there’s a bigger floor space, there’s double the size of the store, and probably a similar space of 50 square metres going to be allocated to Parap Fine Foods, branded Parap Fine Foods within the shop so we did need that extra space”<sup>5</sup>*

*“What you will enter is the dedicated space for the food and boutique Parap Fine Foods wine offering”<sup>6</sup>*

*“If you’re familiar with Parap Fine Food and I assume that maybe you’re not, but – so Neville (Pantazis) had made obviously quite a career out of his unique offerings and is a very popular, well-regarded, well-known store in Darwin and the NT, maybe Australia for that matter. One of the things he has moved to in recent times, and COVID actually has made it he can get even further into it, is pre-prepared meals. He has also managed to have arrangements with well-known restaurants, Hanuman mainly, to have pre-prepared meals, frozen meals, pizzas, gourmet pizzas, pre-prepared fresh meals, tends to make them later in the week particularly Thursday, Friday, Saturdays. And there’s other products that we believe would be quite sought after and looked for in that area, including some his quite unique boutique wines. For example, some of the wines I’ve not heard of that are quite popular, which we think would be quite a popular range where we’re proposing to put this premises. But Rockford Estate for example, Basket Press Rockford, you can’t get that at a Cellarbrations Store, you can’t get that at Woolworths and Coles. Neville has the Northern Territory rights. We would effectively – we will be able to stock wines like Rockford in this store because of our alliance with Parap Fine Foods.*

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<sup>5</sup> Transcript 23.8

<sup>6</sup> Transcript 24.2

*“We’re not building Parap Fine Foods in this store. I mean we’re offering – we’re giving an offering now. This will evolve as well. We hope it goes really well. We hope it goes well enough to take more of the store. But we don’t – you know, we’re hoping it hits the mark, we think it will. We think it will save people a long drive from Palmerston”*<sup>7</sup>

(Paragraph 35 reproduced – Counsel Assisting Submissions)

41. Mr Coleman said in evidence that concept would involve “freezers or refrigeration” and that they would “*no doubt...need a food certificate*”<sup>8</sup>. (Paragraph 36 reproduced – Counsel Assisting Submissions)
42. Mr Coleman told the Commission that the areas of Durack and Marlow Lagoon are some of the more affluent areas of Palmerston, and that the target market for the new premises was “*Cellarbrations target which was popular in Gateway and the Bell as well. So it’s certainly not – its middle to upper is probably the way we would describe it*”. (Paragraph 37 reproduced - Counsel Assisting Submissions)
43. Mr Coleman told the Commission that they will not sell any cask wine as part of the licence concept, and would accept a licence condition to this effect<sup>9</sup>. (Paragraph 38 reproduced - Counsel Assisting Submissions)
44. Other than those modifications, the licensee proposes to sell a product range similar to the range offered at the Gateway premises, and The Bell Bar Bistro (a premises formerly operated by the licensee on the other side of Palmerston). This includes the Cellarbrations “*core range*” as well as wines requested by customers and “*products we know are popular and sought after*”<sup>10</sup>. (Paragraph 39 reproduced - Counsel Assisting Submissions)
45. A \$300,000 fit out of the new premises is proposed<sup>11</sup>. The landlord has committed to various security upgrade works as well<sup>12</sup>. (Paragraph 40 reproduced - Counsel Assisting Submissions)
46. Mr Coleman conceded that if the food offerings didn’t work out, they would try “*other options*”. He did not deny that this could include putting cases of beer or wine in the area currently earmarked for the Parap Fine Foods display<sup>13</sup>. (Paragraph 41 reproduced - Counsel Assisting Submissions)
47. Mr Neville Pantazis made a statement which was accepted into evidence. He told the Commission that his family had operated Parap Fine Foods in Darwin for over 50 years. He stated that he had been approached by Justin and Michael Coleman and Steve Dugan about supplying on a wholesale basis at the proposed premises. The concept involves (as far as Mr Pantazis is concerned):-

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<sup>7</sup> Transcript 31.8

<sup>8</sup> Transcript 31.6

<sup>9</sup> Transcript 25.2

<sup>10</sup> Transcript 25.6

<sup>11</sup> Transcript 25.9

<sup>12</sup> These were non-contentious. Evidence can be found at transcript 66.7 [Dugan] as well as in the statement of Stephen Dugan and Brian Cubbing.

<sup>13</sup> Transcript 47.4

- (a) Providing for sale at Cellarbrations in-house locally produced food products including anti-pasto packs, cheese packs, pasta packs, quiche and alike. Mr Pantazis named some of the local producers including Suzi Kapetas, Pony & Sid, Hanuman, Little Miss Korea and Wharf 1.
- (b) Providing for sale at Cellarbrations specialised liquor products from lesser known regions in NSW, Victoria and WA.

(Paragraph 42 reproduced - Counsel Assisting Submissions)

48. Mr Stephen Dugan is (in effect) the operations manager for the licensee and had oversight of the Gateway premises as part of his role. Mr Dugan addressed the licence concept in his written statement of 29 July 2020, and in oral evidence. (Paragraph 43 reproduced - Counsel Assisting Submissions)
49. In his statement, with reference to a forecast 12.5% sales increase at the new premises, Mr Dugan stated:

*[24] The additional revenue forecast includes a reference to Parap Fine Foods. Neville Pantazis (owner) has reached agreement to wholesale a select range of premium dry goods, prepared meals to cook at home and selected wines to compliment the Cellarbrations stock range. This addition of a 'grab and go' offering will further improve trade and compliment the convenience nature of the centre overall.*

(Paragraph 44 reproduced - Counsel Assisting Submissions)

50. In his oral evidence Mr Dugan stated:

*"Neville's store, he's found that the market is changing and offering a lot of ready to go meals frozen and fresh, along with his dried goods and cured meats and cheeses that have always been there. But he's finding this ready to go food offering is a good seller, and he's excited to expand that into a new market with us. And with that then will come his access as a wine wholesaler to sell specialised wines that, I think, Justin has mentioned already. So the range of food will be premium, pre-prepared to take home and heat up and consume."<sup>14</sup>*

(Paragraph 45 reproduced - Counsel Assisting Submissions)

51. During the course of his evidence before the Commission, Mr Coleman often suggested that Mr Dugan would be better placed to deal with many of the operational details of the proposed new premises. His confidence in the ability of Mr Dugan to deal with those issues was not mis-placed. The Commission was impressed with his candid acknowledgement of the challenges which confronted this application and the thought he had put into the strategies aimed at minimising the risks associated with the proposed venture. The Applicants are indeed fortunate to have him as part of their team.

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<sup>14</sup> Transcript 67.8

52. Brian McCubbing is the managing director of Spectator Investments Pty Ltd, the landlord of the centre. In addition to his statement, he gave oral evidence<sup>15</sup>. (Paragraph 46 reproduced - Counsel Assisting Submissions)
53. Mr McCubbing strongly supports the application, and the applicants whom he had identified as good operators. He claimed to prefer them as tenants over Woolworths whom had previously sought a tenancy in the centre for a bottle shop. (Paragraph 47 reproduced - Counsel Assisting Submissions)
54. Mr McCubbing emphasised that the centre was not a shopping centre as it did not have a supermarket, rather it was a convenience 'node' although the significance of this was not elaborated upon. His company manages numerous commercial properties in NT, SA and WA with a low vacancy rate which he attributes to ensuring the properties have a good mix of tenants. He believes the proposed bottle shop would be a good addition to the current mix of tenants at Fairway Waters. (Paragraph 48 reproduced - Counsel Assisting Submissions)
55. Mr McCubbing had been made aware of the concerns of the objectors but claimed this did not concern him as he has owned the centre for 20 years and there have been 2 minor break-ins only. He accepted this was in the context where there had not been a take away liquor outlet at the centre. Mr McCubbing pointed out that the operating hours of some of the centre's tenants provided a level of security – for example the Coles Express is 24 hour. The other tenancies ensure there is a lot of activity at the centre during the day. (Paragraph 49 reproduced - Counsel Assisting Submissions)
56. Mr McCubbing generally did not accept that there was a risk associated with the bottle shop attracting problem or itinerant drinkers. He emphasised that the Dominoes business had not attracted those types of people. In cross examination he would not countenance any risk associated with problem or itinerant drinkers<sup>16</sup>. (Paragraph 50 reproduced - Counsel Assisting Submissions)
57. Mr McCubbing also gave evidence about the improvement to security that is planned, including installation of bollards and roller shutters at the proposed new bottle shop. He told the Commission that there was no plan for on site security to be provided but "*if in time in the future the need appeared for one, we would consider it on its merit at the time*"<sup>17</sup>. (Paragraph 51 reproduced - Counsel Assisting Submissions)
58. Mr McCubbing conceded that if the applicant sought to sell their liquor business to Woolworths or Coles then the landlord may well have to consent to transfer of the lease to such an entity<sup>18</sup>. (Paragraph 52 reproduced - Counsel Assisting Submissions)

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<sup>15</sup> Transcript 134-146

<sup>16</sup> See for example at Transcript 140.5-9, and at 143.5 to 144.3

<sup>17</sup> Transcript 139.2

<sup>18</sup> Transcript 145.4

59. Mr McCubbing told the Commission that the centre had been “fully developed” for the past 4-5 years and that he had never to his knowledge had a significant traffic conflict or accident. He had never observed problems during his own visits to the centre. He suggested there had been some issues at peak times in the morning and afternoon “*when the increased development was going on*”. He stated that certain car parks are allocated to the Coles Express tenancy, but that other than that there are no allocated car parks. He acknowledged that Dominoes tends to utilise the rear parking for skip bins and staff parking. He said that a plan was being prepared to reconfigure this area including car parking including additional tandem bays. He mentioned 8 or 9 bays. Mr McCubbing said he had not received a complaint from any of the centre’s tenants about customer parking in the past 5 years. His evidence was to the effect that they “anticipate” 15-30 minute dedicated parking spots at the front of the bottle shop. (Paragraph 136 reproduced - Counsel Assisting Submissions)
60. In terms of the entry and exit arrangements at the centre, Mr McCubbing in essence agreed that the traffic flow arrangements were not ideal<sup>19</sup>. He explained to the Commission that at the time the centre was further developed 6 or 7 years ago, the regulatory authorities did not want to change the access arrangements. (Paragraph 137 reproduced - Counsel Assisting Submissions)
61. It had originally been planned that Mr McCubbing would give his evidence by Audio Visual Link however that connection was not possible so we had to make do with an audio link only. Perhaps that created a degree of frustration for Mr McCubbing who was unnecessarily argumentative with Counsel and had to be reminded on a number of occasions to answer the question he had been asked rather than the questions he would have preferred to answer. His refusal to make any concession in relation to the risks associated with problem drinkers accessing liquor from the proposed bottle shop did him no credit such that the Commission has afforded that aspect of his evidence little weight.
62. Ms Wendy Gilpin also gave evidence in support of the application and is particularly supportive of the Parap Fine Foods concept. She is the operator of the hairdressing business in the centre, Instyle Hair and Beauty. She has operated the business there for 8 years, and has resided in Palmerston for 22 years. She prefers to see a shop occupied rather than empty, and prefers that the people of Palmerston to have facilities in the neighbourhood. Ms Gilpin’s lease expires in 12 months and she stated that if the vacant tenancies in the centre are not leased she too will vacate. She employs four staff. (Paragraph 53 reproduced - Counsel Assisting Submissions)
63. Ms Gilpin is not concerned about itinerant drinkers. She does not believe that they will be attracted to the centre, or if they attend they will not hang around. She cites the following factors in support of this:-

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<sup>19</sup> Transcript 145.5 to 146.1

- Busy roads and lack of pedestrian crossings
- The fact that most customers of the centres attend by car
- Security measures and BDR at the proposed bottle shop
- The busy nature of the centre means they would not hang around

(Paragraph 54 reproduced - Counsel Assisting Submissions)

64. Ms Gilpin was provided with a petition by Mr Dugan which she kept in her shop and had it there for a week. Inferentially this is the week pre-dating her statement dated 29 July 2020. The petition was signed by 71 people the majority of whom were from Palmerston, including the suburbs in the immediate vicinity of the centre. Of significance to the applicant, this survey specifically referred to the Parap Fine Foods licence concept. (Paragraph 55 reproduced - Counsel Assisting Submissions)
65. Mr Nixon Smith the author of the DNS Report dated 26 July 2019 which was submitted with the application was not called to give viva voce evidence. The Commission has however had regard to the contents of that report which also included a Community Interest Criteria Document.

## Traffic

66. The only entry point to the Fairway Waters shopping centre is on Hedley Place and requires motorists to drive through the service station and then almost circumnavigate a parking bay in order to park in front of the proposed premises. These arrangements are unusual and a number of objections cited this factor as well as a perceived lack of adequate parking spaces as reasons why the location was not suitable for licensed premises. The Applicant's through their landlord, sensibly obtained an expert Traffic Impact Statement from Mr Bryden Smith, a traffic engineer with Tonkin.<sup>20</sup>
67. Mr Smith also gave evidence before the Commission and readily conceded that the reference in his report to the similar predicted visitation numbers for a video store and a bottle shop were no longer relevant.<sup>21</sup> He was confident however that there were sufficient parking spaces within the complex to cater for existing needs as well as the proposed establishment of a liquor store. He said that whilst the requirement that motorists only enter the shopping centre through the service station would not be regarded as "best practice", it was a safer option than allowing them to make a right turn from the arterial road network<sup>22</sup>. He concluded in his report that the proposed establishment of a takeaway liquor store at the site, assessed against Australian Standards, industry accepted traffic generation guidelines and NT Planning Scheme requirements was generally supportive from a traffic and parking perspective<sup>23</sup>.

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<sup>20</sup> Exhibit 12

<sup>21</sup> Transcript 111

<sup>22</sup> Transcript 114

<sup>23</sup> P7 Exhibit 12

68. Counsel for the Applicants also advised the Commission that he relied on the fact that the risk mitigation strategies that Government had put in place, such as the MUP and BDR were already having a beneficial effect on reducing alcohol related harm<sup>24</sup>

## **The Objections**

69. Once again, the Commission has where indicated relied upon the useful summary of the evidence in this regard that was contained in the Submission of Counsel Assisting.

70. When the application was made and advertised as required, a number of objections were lodged. This included 22 written objections from various community members mainly from the Durack area, an objection from NT Police, and an objection from the City of Palmerston, being the relevant local government entity. (Paragraph 81 reproduced - Counsel Assisting Submissions)

71. All written objections were tendered by consent as part of Exhibit 1, as were the more informal comments provided by the Department of Health representative<sup>25</sup>, and the response of NT Fire & Community Services<sup>26</sup>. (Paragraph 82 reproduced - Counsel Assisting Submissions)

72. The following additional documents were tendered at hearing against the application :

<b><u>Exhibit #</u></b>	<b><u>Document</u></b>
7	Statement of Kara McLean dated 27 July 2020 and attached Face Book Petition
11	Statement of A/Snr Sgt Malcolm Marshall dated 28 July 2020
13	Map presented by Dr Tom Lewis
16	Statement of Supt Angel Stringer dated 28 July 2020
17	Bundle of photographs produced by NT Police
18	Further statistical report of Supt Stringer
22	Bundle of documents – City of Palmerston
24	Statement of Paul Schneider dated 27 July 2020
25	Petition produced by Ken Davidson (and covering email)

(Paragraph 83 reproduced - Counsel Assisting Submissions)

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<sup>24</sup> Dr Kerri Coomber et al "Investigating the introduction of the alcohol minimum unit prices in NT Summary Report February 2020

<sup>25</sup> P246 Exhibit 1

<sup>26</sup> P247 Exhibit 1

73. In addition, oral evidence was heard from A/Superintendent Angela Stringer, A/Sgt Malcolm Marshall, Kara McLean and Dr Tom Lewis against the application. (Paragraph 84 reproduced - Counsel Assisting Submissions)
74. Almost without exception, the objectors were concerned that a bottle shop in the proposed location will become a magnet for problem itinerant drinkers and the associated problems of anti-social behaviour, crime and litter. This was also the focus of much of the evidence at the public hearing. Submissions by objectors expressed the concern as follows:-

*“(visiting the centre) is currently done in peace and without fear or fear of being subject to begging and intimidation for cigarettes and money. It is well observed in the Territory that this behaviour is displayed around Bottle shops.”<sup>27</sup>*

*“My wife and I previously lived in Moulden where there is a takeaway liquor licence at the local shops. During that time my family and I were constantly exposed to the antisocial behaviour and littering directly related to the sale of alcohol to itinerants. The fact is that takeaway alcohol outlets attract itinerants. I have observed this pattern having lived in the Darwin area for more than 25 years and Alice Springs several years prior to that”<sup>28</sup>*

*“Durack is a very family oriented suburb with an abundance of communal parks, lakes, walking paths and a golf course. These areas are regularly used by children and families who reside in the area... establishing a takeaway liquor outlet at Fairway Waters will attract itinerant drinkers....a walk in takeaway bottle shop will certainly entice them particularly given there are parks and a golf course directly behind the ...shops where itinerants could go to consume alcohol out of the view of police”<sup>29</sup>*

*“There are a number of nearby lakes stocked with barramundi fingerlings with fishing platforms constructed, which have been established and promoted by NT Government and Palmerston City Council as family friendly fishing areas. From time to time there have been itinerant camps established in the vicinity of the Marlows Lagoon recreation area and the children’s BMX club, both of which are located in close proximity to the Fairway Waters shopping complex. A takeaway liquor store located at the ...complex will serve to cultivate and foster these camps and attract the associated anti-social behaviour into the area”<sup>30</sup>*

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<sup>27</sup> Transcript 129

<sup>28</sup> Transcript 147

<sup>29</sup> Transcript 147

<sup>30</sup> Transcript 194

[One objector contrasted the Oasis and Palmerston Shopping Centres with the former not having a takeaway liquor shop] *“Despite being only 100 metres apart, Palmerston Shopping Centre experiences groups of drunken itinerants hanging around, humbugging shoppers for money, causing problems for shopping centre security and fighting amongst themselves on a daily/nightly basis, whereas Oasis has little or none of those issues”*<sup>31</sup>

*“The surrounding bushland along Elrundie Avenue is already frequented by large numbers of itinerants and antisocial behaviour is rampant on most nights with regular incidents of public drunkenness, violence, crossing the road in an unsafe manner, and sleeping, verbally abuse other residents including children and many other unsavoury and indecent acts. Should the development take place those issues will relocate from the camp sites along Elrundie to the surrounds of the bottle shop where the actions mentioned above will continue”*<sup>32</sup>.

(From an NT Police officer of 20 years experience speaking in a private capacity) *“I know through my experience that wherever take away alcohol is sold it attracts itinerant persons, in particular due to the growing migration of community members; thanks largely to restrictions of alcohol there. A direct example are the itinerants purchasing alcohol in Moulden and then walking across Elrundie to camp and drink in the bush. Durack can expect all the parklands that centralise the suburb and form the golf course to become shaded and convenient locations to consume alcohol purchased from the proposed site; out of view of traffic and difficult to proactively police”* [this objector also referred to current itinerant drinking camps on NTG land near the water park with alcohol being purchased in the Palmerston CBD with fighting and anti-social issues 200 m from the Police Station]<sup>33</sup>

*“It greatly concerns me as a property owner in the area of the proposed bottle shop and strongly believe that the antisocial behaviour will increase dramatically. I witness such behaviour on a daily basis already, whether it be on my early morning jog or afternoon walk having to step over local itinerants sleeping/drunk and passed out on the public walking paths along Elrundie Avenue or whilst driving they carelessly wander out onto the road.”*<sup>34</sup>

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<sup>31</sup> Transcript 148

<sup>32</sup> Transcript 196

<sup>33</sup> Transcript 134

<sup>34</sup> Transcript 200

The City of Palmerston stated “*the majority of the facilities (at the centre) are accessed by children in the community for their convenience and are accessible by foot/cycle. Youth are not necessarily in the presence of adults and could be subject to anti-social behaviour which is common around liquor stores in Palmerston....Council is aware of a frequent alcohol related incidents occurring in the Marlows Lagoon recreation reserve. There are currently no liquor outlets in the immediate vicinity. An additional outlet in this vicinity will make it easier for these people to access liquor*”<sup>35</sup>. (Paragraph 85 reproduced - Counsel Assisting Submissions)

75. Other matters raised by objectors included:-

- (a) Proximity to at risk groups particularly children and young people at three child care centres and Durack Primary School, with the Good Start Early Learning Centre only 50m away on Hedley Pl<sup>36</sup>.
- (b) Proximity of shelter opportunities for problem drinkers including the golf course behind the centre, shrubbery near the childcare centre, the BMX stadium, the Radio Controlled Car Club.<sup>37</sup>
- (c) The number of other outlets selling takeaway liquor in the vicinity [in this regard the Commission identified 11 takeaway liquor outlets as relevant for the purposes of the application as being located in the main trade area of the proposed premises]<sup>38</sup>. One objector stated “*there is already a diversity of liquor outlets within the area and purchasing of takeaway alcohol is very easy and accessible with a high density of outlets in close proximity*”<sup>39</sup>.  
  
In this vein, NT Police raised that “*takeaway liquor sales for the Palmerston area in July 2019 alone were 89,000 sales or 17.23% of total NT sales of 520,339*”<sup>40</sup>.
- (d) The small ‘family friendly’ / child friendly nature of the shopping centre and the suburb generally (combined with not wanting children to witness anti-social behaviour)<sup>41</sup>
- (e) Lack of any security presence at the centre (in comparison to the Gateway Shopping Centre location with a “*significant security presence*”<sup>42</sup>.

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<sup>35</sup> Transcript 213

<sup>36</sup> For example at p128 Exhibit 1, p135, p137, p151, 179, 194 – this was also raised by the City of Palmerston at 212

<sup>37</sup> See for example at Transcript 196

<sup>38</sup> For example at Transcript 128, 135, 137, 150 -153, 186, 195, 200, – the relevant outlets are BWS Bakewell; Palmerston Tavern (bottle shop); Pit Lane Liquor; Liquor land Palmerston; Palmerston Sports Club (bottle shop); Cazalys (takeaway); The Bell Bar Bistro (bottle shop); Woodroffe Supermarket; Moulden Supermarket; Zuccoli IGA; Gray Supermarket.

<sup>39</sup> Transcript 195

<sup>40</sup> Transcript 215

<sup>41</sup> For example at Transcript 129, 137, 156, 179 – this was also raised by the City of Palmerston at 212

<sup>42</sup> Raised by the City of Palmerston at Transcript 213

- (f) Concern about carpark congestion/ traffic flow if a liquor store was added<sup>43</sup> - one objector described the concern as follows *“The entrance and exit to the shopping facility on Hedley Place is very busy especially between 4pm and 6pm; there are long cues through the garage to access the shopping centre”*<sup>44</sup>.
- (g) The present location is away from residential areas, the proposed location is not<sup>45</sup>;
- (h) Location of proposed premises on a busy roadway, congestion on the roundabout adjacent to the shopping centre<sup>46</sup>;
- (i) Increased crime and concerns about safety of residents<sup>47</sup>. The issue of alcohol related crime in Palmerston generally is discussed below.
- (j) The fact that the nearby Marlow Lagoon area is already a problem area (this was the subject of evidence as well and is addressed below)
- (k) Lower socio-economic suburbs of Driver, Moulden, Gray and Woodroffe in the vicinity which fall into the “most disadvantaged” category in the ABS SEIFA index<sup>48</sup>.
- (l) The fact that the Northern Territory has a significant problem associated with alcohol abuse and associated crime and domestic violence<sup>49</sup>.
- (m) Location of housing for vulnerable youths in Durack<sup>50</sup>
- (n) The issue of fuel and liquor being sold in the same vicinity<sup>51</sup>. One objector referred to alcohol’s contribution to the road toll and stated that *“placing a liquor store at arguably Palmerston’s busiest fuel station is socially irresponsible and will enable impulsive alcohol purchases”*.
- (o) Possibility that the proposed premises would take business away from the Golf Course<sup>52</sup>

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<sup>43</sup>For example at Transcript 129. P143, 156, 179 – also raised by the City of Palmerston at 212

<sup>44</sup> Transcript 184

<sup>45</sup> For example at Transcript 129

<sup>46</sup> For example Transcript 184,

<sup>47</sup> For example at Transcript 137, 141, 194

<sup>48</sup> See City of Palmerston objection at Transcript 213

<sup>49</sup> Transcript 137, 143, 158, 194 – see also NT Police objection at 214

<sup>50</sup> Transcript 184, 186

<sup>51</sup> Transcript 158

<sup>52</sup> For example at Transcript 128

(p) The fact that the Commission (or previous iterations of it) had previously rejected applications for a liquor store in the area – eg at Fairway Waters Shopping Centre in 2000, and at Driver Supermarket “*within a 700m radius of Fairway Waters Shopping Complex*”<sup>53</sup>.

(Paragraph 86 reproduced - Counsel Assisting Submissions)

76. At the hearing, Ms Kara McLean (an objector) gave brief evidence and produced a petition which she had created on ‘change.org’ which allowed people to sign up over the internet. This became MFI 7 along with the accompanying statutory declaration, as the applicant objected to its tender. Ms McLean explained that she circulated the petition via four (4) community Facebook pages of which she was a member – namely the “Heights Durack”, “Durack Community”, “Durack Neighbourhood Watch” and “Marlow Lagoon Community” pages. She explained how you could become a member of such a page, generally how it works, and that the Durack Community page had around 3000 members. She explained that access to the petition would either by via the links she published on the 4 named Facebook pages, or via the change.org site itself if someone was aware of the survey. (Paragraph 87 reproduced - Counsel Assisting Submissions)
77. 305 people signed the survey indicating they did not support the application. A smaller number of people left comments. Because location of the signing party is likely drawn from their location as recorded on a Facebook page, there was a diverse range of locations shown in the survey. Only approximately a fifth of the signatories were specifically identified as being from Durack or adjacent suburbs (and some of these appear to be from among the 22 community objectors), and an additional 30 or so persons from Palmerston. The rest are shown as Darwin, elsewhere in Australia, or OVERSEAS. (Paragraph 88 reproduced - Counsel Assisting Submissions)
78. The Applicant’s object to the Commission receiving the petition as evidence. Counsel for the Applicant’s submitted:
- “These petitions are inadmissible. Their only relevance is to suggest there are further objectors. The manner in which objections are to be made and received is prescribed by Division 5 of Part 3 of the Liquor Act. The petitions do not comply with those requirements. Even if received the petitions have little if any weight”.* (Paragraphs 55 and 56 reproduced - Counsel Assisting Submissions)
79. The Commission accepts that the petition cannot be used to circumvent the requirements of the Division 5 of Part 3 of the Act and be treated as further objections to the application. At its highest it is some evidence of a lack of support for the proposed outlet from a section of the community in the same way that the Applicants have relied on their petitions<sup>54</sup> to indicate a degree of support from some in the community for the proposal.

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<sup>53</sup> For example at Transcript 195

<sup>54</sup> Exhibits 10 and 15

80. Although it may come as a surprise to some media commentators, popular support for a proposed new liquor outlet is not one of the objectives or criteria that the Commission is required to take into account under section 49(2) and (3). The Community Impact Assessment Guidelines do 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”, so to that extent it is relevant to consider what benefit or lack of benefit the local community associates with the proposal.
81. If one of the parties had conducted an objective market needs survey with proper controls in relation to the methodological process, then that could provide cogent evidence in relation to the benefits to the local community of the proposed new premises. However, neither parties’ petitions in this matter involve the rigorous control conditions that would be required. The Commission will have regard to the petitions both for and against the proposed outlet but has afforded them little weight.
82. Dr Tom Lewis (an objector) also gave evidence<sup>55</sup>. He told the Commission he had lived in the Durack area for 7 years. He is also an Alderman for the City of Palmerston. Dr Lewis presented a map of the Palmerston area which became Exhibit 13. On it he had marked a red circle marking a 1 km radius around the proposed bottle shop location. The yellow circle marked a 1km radius around the current Gateway location. Dr Lewis used this to highlight the following:-
- (a) Around 173 residential properties in the vicinity of the Gateway location compared to 512 in the vicinity of the proposed location
  - (b) Lack of recreational areas for children in the vicinity of the Gateway location compared to the vicinity of the proposed location which he pointed out included 2 primary schools<sup>56</sup>, 3 child care centres, the BMX club and the Marlow Lagoon pet park.
- (Paragraph 90 reproduced - Counsel Assisting Submissions)
83. Dr Lewis said in his evidence with reference to the above:

*“This is proposing putting a bottle shop in and area where there are literally thousands of children....hard to measure of course, how many of those houses and dwellings have children in them but my observation as a resident in the area and as a council member is that there are considerable numbers. For these reasons I would think that this is a totally inappropriate place for a bottle shop<sup>57</sup>”.*

(Paragraph 91 reproduced - Counsel Assisting Submissions)

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<sup>55</sup> Transcript 118-121

<sup>56</sup> And another 2 just outside the red circle

<sup>57</sup> Transcript 11.3

84. He also told the Commission about his knowledge of Driver which he described as “*people heavy*” and “*children heavy*”, similar to Durack<sup>58</sup>. His evidence regarding the satellite drinkers camp within the red circle was supportive of the police evidence, and he even said that he had been personally assaulted there on one occasion. He was aware of issues at Marlow Lagoon but had not personally experienced issues there.  
(Paragraph 92 reproduced - Counsel Assisting Submissions)

## **Additional Material**

85. The Commission informed the parties at the outset that it would receive both the Alcohol Policies and Legislation Review Final Report Oct 2017 (“the Riley Report”) and the 2019 Menzies report by D’Abbs et al ‘The Social and Economic Harms of Alcohol Consumption in the Northern Territory’ (“the Menzies report”). (Paragraph 94 reproduced - Counsel Assisting Submissions)

86. Further, the following data obtained by the Commission was tendered:

20 Banned Drinker Register data

23 PAC data and summary by premises and year (2015 – 2019).

Paragraph 95 reproduced - Counsel Assisting Submissions

## **Assessment of the Matter**

87. At the commencement of this hearing, the Commission advised the parties that, in the absence of any submissions to the contrary it would be applying the law, as it had been interpreted in the case of Liquorland (Australia) Pty Ltd, LC2019/038 and LC2020/007 decided on 3 July 2020. That case also involved a substitution of premises in Palmerston under the new provision of the *Liquor Amendment Act 2020 (NT)*. None of the parties have raised any issue in this proceedings with the Commission applying the law as it had determined in the Liquorland matter, so we do not propose to restate it here or revisit the rulings we made on issues such as “anti-social behaviour”, “significant adverse impact” and “density”.

88. Section 49(1) of the 2019 Act provides<sup>59</sup>:

### **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.*

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<sup>58</sup> Transcript 119

<sup>59</sup> Paragraph 80 Liquorland Decision Notice dated 3 July 2020

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 meets this requirement.

89. 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)<sup>60</sup>.
90. 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<sup>61</sup>:
- (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.*

91. Section 49(3) of the 2019 Act provides<sup>62</sup>;

**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;*

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<sup>60</sup> Liquorland Decision Notice dated 3 July 2020 para 81

<sup>61</sup> Liquorland Decision Notice dated 3 July 2020 para 82

<sup>62</sup> Liquorland Decision Notice dated 3 July 2020 para 102

- (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.*

### **Matters not in serious contention**

92. Having now had an opportunity to consider the totality of the evidence together with the submissions by Counsel Assisting, both the initial submissions and submissions in reply by Mr Crawley SC for the Applicants, and Mr Anderson's submissions on behalf of NT Police and the Palmerston Council, the Commission is able to make a number of findings favourable to the Applicants on relatively non-contentious issues.
93. Mr Coleman has a proud reputation within the Northern Territory Hospitality Industry and the Commission has already expressed a favourable view of Mr Dugan's ability to manage licensed premises. Accordingly, we have no doubt that the Licensee is a fit and proper person and would comply with all RSA requirements of the licence. Therefore the requirements of section 49(1)(a) is satisfied as are the objectives of sections 49(2)(b), (d), (f), (g), (h) and (i).
94. Even though the proposed new premises are considerably larger than the previous premises at the Gateway Shopping Centre and the proposed trading hours would be longer, the Commission accepts that Mr Dugan's projected sales increase of 12.5% was a realistic assessment.
95. To their credit, the Applicants did not suggest that Palmerston was somehow immune from the harmful consequences of the Territory's higher rates of alcohol consumption. Having regard to the Commission's findings in both the Dan Murphy<sup>63</sup> and Liquorland applications<sup>64</sup>, that overall consumption rates of alcohol in the Territory will continue to decline in line with national trends, the Commission is satisfied that there would not be any substantive increase in the volume of liquor going into the community through the grant of this application<sup>65</sup>

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<sup>63</sup> Woolworths Group Ltd Decision Notice dated 20 September 2019

<sup>64</sup> Liquorland Decision Notice dated 3 July 2020

<sup>65</sup> Section 49(3)(h) of *Liquor Act 2019*

96. In the Liquorland decision<sup>66</sup> the Commission found that even though that applicant was proposing to substitute a licence from outside the local community area into Palmerston that the existing ratio of packaged liquor outlets to population was not high. As this application involves the proposed transfer of an existing Palmerston licence to another venue within Palmerston, it cannot be suggested that this would result in an increase in ratio or density of liquor outlets within this community<sup>67</sup>
97. A number of objectors relied upon a decision of the then Licensing Commission in July 2000 refusing an application by Liquorland to establish a packaged liquor outlet at this shopping centre because of its close proximity to the Coles Express Service Station. The Commission takes the view that decision needs to be viewed in the context of a policy shift away from an earlier Northern Territory licensing regime which had historically countenanced the sale of liquor from service stations. There is no evidence before us to indicate that having a bottleshop close to a service station will be more likely to encourage motorists to drink and drive. There are a number of drive-through packaged liquor outlets within Palmerston which are likely to offer a more convenient option for those motorists prepared to risk the consequences of drinking whilst driving.
98. Whilst the traffic and parking arrangements within the Fairway Waters Shopping Centre are unusual, the Commission accepts the evidence of the traffic expert Mr Bryden Smith that they comply with the relevant safety standards. There will be no doubt be some risks associated with either intoxicated motorists or pedestrians seeking to access the venue, however those problems are common to most stand-alone liquor outlets. The one continuing concern we hold over traffic related issues is the risk of serious or fatal harm to inebriated pedestrians who might be motivated to cross Kirkland Road in the hope of acquiring liquor from these premises. We will address that issue in more detail later in this decision.

## **Licence Concept**

99. Subsequent to the lodgement of this application, the Applicants have developed the proposed concept earlier referred to of using part of the licensed premises for the sale of gourmet foodstuffs and locally prepared frozen meals. It is relevant that this concept does not appear to have been raised with Licensing Officers nor specific legal advice obtained as to whether co-location of grocery items was permissible given the thrust of the new Act to eventually confine the sale of takeaway liquor to stand-alone businesses in which the primary focus of the business is the sale of alcohol<sup>68</sup>. If the concept had been discussed with Licensing Officers we believe that the inherent difficulties associated with such a proposal would have been explained to the Applicants.

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<sup>66</sup> Liquorland Decision Notice dated 3 July 2020

<sup>67</sup> Section 49(3)(g) of *Liquor Act 2019*

<sup>68</sup> Riley Review page 47

100. The creation of new grocery authorities is now prohibited by virtue of section 84(2) of the Act and the holder of an existing grocery authority will be restricted to gross liquor sales of no more than 25% of the gross value of all sales<sup>69</sup>.
101. The Pantazis family, through their Parap Fine Foods Store, has made a significant contribution to improving the quality of life in Darwin for over 50 years. The concept of bringing some of their gourmet food and wine products to a venue in Palmerston is therefore appealing. However, as the Applicants hold a Liquor Merchant's Licence we believe it would be contrary to the clear intention of the Act which is to prevent the creation of any further combined grocery and liquor stores.
102. Although the Applicant's counsel submitted that most other takeaway liquor outlets sell some food items such as chips and nuts as well as non-alcoholic drinks<sup>70</sup> what is proposed here is significantly different. There is planned to be at least 50 square meters devoted to food products for which Mr Coleman had "no doubt we will need a food certificate"<sup>71</sup>.
103. If the concept proved popular then it is quite conceivable that customers would visit the store solely for the purpose of purchasing gourmet food items whereas people rarely attend a stand-alone takeaway liquor store to purchase their chips or soft drinks unless they have gone there to also obtain liquor products. If there is no market for the gourmet food products and the licence changes hands, a new licensee may seek to operate a small convenience store within the terms of the special conditions that would necessarily have been attached to this authority. Such a result cannot have been intended by the legislature which has retained a requirement for a Grocery Authority that "Each area of the licensed premises where liquor is displayed for sale or stored must be separated from any area where the licensee's non liquor products are displayed or sold".<sup>72</sup>.
104. The undesirability of proceeding down the path that has been proposed by the Applicants becomes patently obvious when consideration is given to what sort of generic conditions might be attached to the authority to allow the proposal to take effect. For example, "The licensee may sell a range of pre-prepared meals and other grocery items provided the total gross sales of these items is no more than 25% of the gross liquor sales".
105. Such a condition would be contrary to the scheme of the Act as it governs grocery authorities as we would in effect be creating a new alternative form of grocery authority which would no doubt present as an attractive precedent for some of those licensees that will find it difficult to confine their liquor sales to 25% of total sales.

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<sup>69</sup> Regulation 53(2) of Liquor Regulations 2019

<sup>70</sup> Applicants submissions paragraphs 20-25

<sup>71</sup> Transcript 31

<sup>72</sup> See regulation 55 of the Liquor Regulations 2019

106. The Commission is therefore not persuaded that it would be lawful or an appropriate exercise of discretion to approve the substitution on conditions that would enable the licensee to sell the range of grocery items that has been proposed alongside its packaged liquor products. That certainly does not mean that there is no merit in some other licensee bringing Parap Fine Foods products to Palmerston, it just means that the licensee would need to already hold a grocery authority.

## **Proposed Benefits**

107. Having found that the proposed gourmet food concept is not permissible, the Commission is still obliged to have regard to the other potential benefits to the community in accordance with the purposes of the Act<sup>73</sup> and the section 49(2)(e) objective of “increasing cultural, recreational, employment or tourism benefits for the local community area”.

108. Mr Coleman gave evidence that he expected to outlay around \$300 000 for the fit-out of the premises if the application was approved.<sup>74</sup> He had also budgeted for three staff (on a full time basis) to work across the various shifts at the store.<sup>75</sup> Although the Gateway store is no longer operating, those experienced staff members who had been operating that store have been retained elsewhere within the Applicants’ other licensed business interests pending a decision on the outcome of this application. While those individuals may well keep the positions they currently hold their jobs will not be backfilled if the new store does not become a reality so the Commission still needs to acknowledge that there are three jobs dependant on this application succeeding.

109. The Applicant’s also relied upon the evidence of Mr Dugan that Cellarbrations offers a greater range of liquor products than BWS for example. Although 90% of sales come from the same core products that would be stocked by BWS, 50% of the floor space would be devoted to a more diverse range of products.<sup>76</sup> The Commission is prepared to accept that this additional choice of liquor products would be regarded as a benefit by some members of the local community however, we also note that there is already another Cellarbrations store at Zuccoli IGA.

## **Substitution**

110. Section 75(3) of the Act provides that an application to substitute premises is to be made in the same manner as an application to vary conditions of the licence under Part 4, Division 5.

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<sup>73</sup> Section 3(2) of the 2019 Act

<sup>74</sup> Transcript 25

<sup>75</sup> Transcript 26

<sup>76</sup> Transcript 96

111. In his Submissions in Reply, Counsel for the Applicant's submitted<sup>77</sup>:

*However, where the proposed new premises are within the same general area as the existing premises, there is an artificiality in an assessment of the public interest and community impact determination. The relevant "community" and "public" are the same. If the premises are a similar size,*

- a. there will be little new ongoing employment created, but rather ensuring the existing employment remains within the area;*
- b. there is unlikely to be a significant investment, other than the initial set-up costs;*
- c. there will be no real change in ratios and density of outlets;*
- d. there will be no real change to choice or convenience to the community within that general area;*
- e. there will be no real change to anti-social behaviour overall within that general area.*

112. The Commission accepts that where the relevant community is largely the same and the proposed new premises are of a similar size, that increases in density or volume of liquor sales are not particularly relevant to our consideration of the matter. However, Counsel's submissions tend to overlook the fact that a packaged liquor outlet within the confines of a major sub-regional shopping centre with sophisticated security arrangements and where the vast majority of customers will have driven there for a range of retail needs, is quite different from the small, convenience focussed Fairway Waters Shopping Centre.

113. There were no objections by any local residents to the application for the licence at the Gateway Shopping Centre. Furthermore, both NT Police and Palmerston Council advised the Director-General of Licensing that they had no issues with the proposed premises, the subject of that application. Whereas in relation to this application to substitute premises there is very real opposition to the proposed siting of the outlet in this small shopping centre which is on the outskirts of a residential area which borders on to parklands and bush. The Palmerston Council, the relevant Local Government Authority for this community, has lodged a comprehensive objection to the application and has taken an active role in these proceedings. Similarly, NT Police have lodged an objection to the application to relocate the licence to the proposed premises, they have adduced evidence and been represented by counsel in these proceedings. The overriding concern raised by both institutional and individual objectors is that itinerant "problem drinkers" will congregate in the nearby bush and parklands with the intention of more conveniently accessing liquor supplies from these proposed premises. This is clearly the crucial issue for determination by the Commission.

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<sup>77</sup> Submissions in Reply - Counsel for the Applicants dated 25 August 2020

## **Is there a material risk the premises will become a “Magnet” for itinerant problem drinkers?**

114. Superintendent Stringer in her statutory declaration dated 23 July 2020 deposed interalia<sup>78</sup>:

*NTPF experience shows that regardless of a licensee’s operation model, compliance with Banned Drinker’s Register (BDR) requirements, and Responsible Service of Alcohol (RSA) obligations, the placement of a takeaway licensed premises advances the attraction of problem drinkers to that location particularly where a licensed premise is situated near open public spaces and/or vacant land.*

*There continues to be issues with illicit camping sites in Palmerston shown in Annexure “AS5”. In relation to this application there is 2 illicit camping sites close by which are subject of collaborative activities with NTPF and related stakeholders. Although these sites are regularly disbanded they are re-established repeatedly. Increase in problem drinkers in this area could establish more illicit camping sites or drinking locations in the adjoining golf course, laneway and/or vacant crown land in close proximity.*

*The proposed location is not currently covered by CCTV, nor are there plans to cover this area in the near future. In contrast the location of the current license (Gateway) is covered by a broad private and public CCTV network and complimented by internal security within Gateway Shopping Centre which assist in detecting, deterring and preventing ASB in the area.*

*If this application was successful and did result in an increase in incidents reported to or detected by police there would be a significant reduction in the ability for NTPF Palmerston to provide pro-active police activities. On all the reasons listed in this statement this application is not supported by NTPF and therefore formally objected to.*

115. Attached to Superintendent Stringer’s statutory declaration were a number of documents including extracts from the Police PROMIS data system as well as reports from the Police Territory Intelligence and Co-ordination Centre (TICC) which had conducted a “sleeping rough” homelessness survey in both 2019 and 2020.

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<sup>78</sup> Exhibit 16, p 14, 15, 17 and 18

116. Superintendent Stringer stated that the PROMIS data showed that there had been an increase in alcohol related incidents in the Palmerston region for 2019/2020 compared to the previous financial year despite there having been a decrease for the rest of the Northern Territory<sup>79</sup>. She also stated at paragraph 12 of her statutory declaration:

*It is my experience throughout 25 years of Policing that areas where there are takeaway liquor outlets there is a corresponding increase in itinerant anti-social behaviour as seen through Annexure "AS3". Darwin and Palmerston have an increasing itinerant population who have migrated due to alcohol restrictions in other areas of the Northern Territory. This is supported through Countrymen 2018 survey, Sleep Rough Survey 2019 and Sleep Rough Survey 2019 (SIC), see Annexure "AS4"*

117. During her evidence, Superintendent Stringer was questioned at length by Commissioners and Counsel over the shortcomings of the data that accompanied her statutory declaration. She conceded that the PROMIS reports on the level of alcohol related incidents for a region or suburb did not count incidents where person who may have been causing a disturbance decamped prior to the arrival of police. As officers would not be in a position to make an assessment of any person's sobriety the incident would not be listed as alcohol related<sup>80</sup>. Furthermore, if Police attend an itinerant drinking camp and tip out liquor (LTO) this will not be in the crime statistics nor will protective apprehensions by both Police and the Larrakia Night Patrol<sup>81</sup>.
118. In relation to the Homeless surveys, Superintendent Stringer also cautioned against relying on the number of people surveyed as an accurate reflection of the number of itinerant people in any particular area because the numbers of people surveyed depended on the competing priorities of police officers at any given time<sup>82</sup>. She said that the real importance of the TICC data from the homeless surveys was that "It says that the people that are coming into Darwin who are sleeping rough are here because of alcohol<sup>83</sup>."
119. Senior Sergeant Marshall also gave evidence in this matter. He is currently managing "Operation Davenport" a multi-agency operation targeting anti-social behaviour in Palmerston<sup>84</sup>. In his statutory declaration which was tendered in the proceedings he deposed<sup>85</sup>:

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<sup>79</sup> Exhibit 16 p 9

<sup>80</sup> Transcript 128

<sup>81</sup> Transcript 158-160

<sup>82</sup> Transcript 153

<sup>83</sup> Transcript 154

<sup>84</sup> Exhibit 11 p3

<sup>85</sup> Exhibit 11 paras 4-9

*During this operation we have been conducting joint patrols with Larrakia Nation and Public Housing Safety Officers targeting known hot spots of Anti-Social behaviour Illegal camp sites and alcohol related offending.*

*Two areas of concern that are also targeted by Larrakia Nation and Police are the illegal camp sites around Marlow's Lagoon and a camp known as Satellite camp which are both in the proximately (SIC) of Durack where the proposed new liquor outlet is planned.*

*In my experience through the years of running operations through the Greater Darwin region I foresee a major increase in ASB at the new location. Statistics from other liquor outlets in Palmerston are reflect the increase in this type of offending at location where liquor outlets are located.*

*Some other points of concern is the traffic in that area, the 3 roads at that location being University Avenue, Kirkland road and Elrundie Avenue are both 70kmh and 80 KMH zones respectively and there is nil pedestrian crossing points anywhere near that location to allow pedestrians to cross in a safe manner. This risk in increased dramatically if an intoxicated persons is attempting to cross a very busy arterial road.*

*Over the last few years since the introductions of Police Auxiliary Liquor Inspectors have manned all of the bottle shops in everywhere except Darwin there has been a major influx of Itinerants from out of Darwin have moved to Darwin and Palmerston and are living in transient lifestyle where they are just long grassing in the various camps all over. Just about all of them do not have access to a vehicle and mini bus services are heavily used to convey itinerants to the bottle shops and back to their camps. Having an outlet so close to a number of camps they would no longer use the mini bus services and would walk across the major arterial roads to access the proposed bottle shop location hence creating further risks.*

*Other areas of concern is the open spaces of the golf course which provides shaded areas which are known to attract persons drinking and the location of the course being adjacent to the proposed site. Nearby there is also a child care facility and Durack Primary School. School ovals are also a known spot that itinerants trend to attend to drink. Three are minimal reports of this type of offending in the immediate suburb of Durack this in my belief this is due to there being nil liquor Outlets in the vicinity.*

120. At the hearing on 29 July 2020, Sergeant Marshall said that Police attended 5 incidents the day before at Marlow Lagoon involving intoxicated itinerants. He testified<sup>86</sup>:

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<sup>86</sup> Transcript 83

*“There was five incidents there yesterday. Two – one just after 1 o’clock. Then one about 1:40. There was groups of about 30 or 40 people there all drinking, causing issues. There was males urinating right next to the playground while there was children there doing orienteering through the school. Members attended, tried to them move on. Issued some infringement notices and then got called back again for further. And then last evening around 8 o’clock there was another three incidents members had to attend to Marlow Lagoon in relation to the itinerant drinking and causing issues.”*

121. It was suggested to the Police witness during cross-examination by Counsel for the Applicants that a well run packaged liquor outlet would not necessarily attract itinerant problem drinkers. Superintendent Stringer conceded that the way in which an outlet was managed did play a role however for her the significant issue was “does (the suburb) have lots of parklands around where they can actually go to and hide to drink their alcohol?”<sup>87</sup>. Superintendent Stringer also said in evidence that cask wine was no longer the drink of choice for problem drinkers who had shifted to spirits such as Rum and Bourbon as well as full strength beer.
122. Mr Dugan properly conceded that some of the liquor that they would stock was the type that would be sought by itinerant drinkers and it would be sold at a competitive price point<sup>88</sup>. Whilst the Commission accepts that itinerant drinkers are not this licensee’s target market, Mr Dugan also conceded that he could not refuse anyone who met their minimum dress standards<sup>89</sup>,
123. A number of individual objectors have mirrored the concerns expressed by Police and argued that a takeaway liquor outlet will encourage the establishment of more drinking camps in the nearby bush and “attract the associated anti-social behaviour into the area”<sup>90</sup>.
124. Dr Tom Lewis, one of the objectors and a Palmerston City Council alderman, gave evidence. He presented a map of the Palmerston area which was tendered as Exhibit 13. He said that on his calculation there were only 173 residential properties within a 1km radius of the former Gateway premises whereas there were 512 within the same radius of the Fairway Waters site.
125. Dr Lewis also said “This is proposing putting a bottle shop in an area where there are thousands of children. For those reasons. I would think that this is in a totally inappropriate place for a bottle shop to be established”<sup>91</sup>.

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<sup>87</sup> Transcript 150

<sup>88</sup> Transcript 96

<sup>89</sup> Transcript 103

<sup>90</sup> Exhibit 1 p 194

<sup>91</sup> Transcript 119

126. Some of the other objectors also expressed the view that it was not appropriate to have a bottle shop in a residential area such as theirs. Whilst it is understandable that residents want to preserve the amenity of their own suburbs, most of them also want to be able to purchase liquor from a convenient location. As the Commission found in the Liquorland matter, in Palmerston the ratio of existing packaged liquor outlets to population is not high<sup>92</sup>.
127. The Commission accepts the evidence of the Applicants that there was no significant anti-social behaviour associated with the operation of their Bell Bar and Bistro takeaway outlet which is located within a residential suburb with a similar demographic to Durack.
128. Counsel for the Applicant, having analysed the Police data from annexure “AS3” to Exhibit 16 combined with the PAC data, submitted that despite the existence of liquor outlets within the suburbs of Bakewell, Bellamack and Zuccoli there were relatively low levels of anti-social behaviour recorded<sup>93</sup>. Although as we have previously noted, the Police data needs to be treated with some caution, Mr Crawley SC makes a valid point. However, his submission that it is all about the manner in which the outlet is managed is in our view only part of the reason for the difference. The three suburbs with the highest recorded levels of “drunk persons” were Moulden- 609, Gray – 345 and Woodroffe – 298. They are also three of the most disadvantaged suburbs within Palmerston on the Socio-Economic Indexes for Areas (SEIFA)<sup>94</sup>. It is also highly relevant, in our view that the Moulden Bottlemart Express is currently the closest liquor outlet to the popular drinking area within the Marlow Lagoon Recreation Reserve.
129. Counsel for the Applicants submitted that the proposed location was “not attractive to itinerant elements”<sup>95</sup> and that the Satellite Camps are more conveniently located to a number of liquor outlets within the Palmerston CBD. However on the evidence before us there is no permanent infrastructure at any of these itinerant camps such as would require the transient residents to remain committed to any particular site. The Satellite Camps are obviously popular because of their close proximity to the liquor outlets operated by BWS and Liquorland in the CBD. However, there is not a large expanse of bushland there for drinkers to avoid detection and the area is subject to regular police patrols. Most of the other temporary drinking camps require the drinkers to use a mini bus taxi to source their liquor, the Commission has no doubt that because of this proposed outlet’s proximity to extensive bushland it would prove to be a popular source of alcohol for the itinerant drinkers.

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<sup>92</sup> Liquorland Decision Notice dated 3 July 2020 para 124

<sup>93</sup> Counsel for Applicants Submissions para 49

<sup>94</sup> Exhibit 1 p 213

<sup>95</sup> Counsel for Applicants Submissions para 39(h)

130. Counsel for the Police and Palmerston Council submitted<sup>96</sup>:

*While acknowledging the issue, the applicant's submissions fail to grapple with the concerns about the proximity of the Marlow Lagoon Recreation Reserve to the proposed site. They note that the current practice in itinerants using that area is to take minibuses to and from the area<sup>97</sup>, but simply fails to acknowledge that their outlet would be in easy walking distance. That the proposed location is not currently attractive to itinerant elements (in the absence of the Liquor outlet), is not the point<sup>98</sup>.*

131. On the basis of all the evidence before us, in particular the collective experience of the objectors, Council and Police witnesses, the Commission finds that establishing a packaged liquor outlet at this location will provide a convenient source of liquor for itinerant problem drinkers seeking to consume alcohol in and around Marlow Lagoon Recreation Reserve. We also find that this would result in an increase in the level of anti-social behaviour in and around the Fairway Waters Shopping Centre, including the adjacent golf course.

## **Risk of road fatalities**

132. Having found that the proposed outlet would prove to be a “magnet” for problem drinkers, the concerns raised by the Police over the potential for fatal pedestrian strikes on the surrounding arterial roads are relevant. The Commission finds that there would be a real risk of harm to pedestrians, particularly those that might be intoxicated crossing the arterial roads of Elrundie Avenue or Kirkland Road to visit or leave this store especially at night.

## **The affected community**

133. Section 49 of the Act which outlines the factors that are relevant to the Commission's assessment of public interest and community impact, variously refers to the relevant population as - community, people or a group of people, local community area, persons who reside or work in the vicinity of the proposed licensed premises, the geographical area that would be affected and the people or community that would be affected. Given the range of descriptors for “community” the Commission has been given a broad discretion to consider the various sections of the community that might benefit from the proposed substitution as well as those who might be adversely impacted.

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<sup>96</sup> Submissions of Counsel of objectors, City of Palmerston and NT Police dated 8 September 2020

<sup>97</sup> Applicant's submissions at (37(b))

<sup>98</sup> Applicant's submissions at (39(h))

134. The Applicants have not unreasonably focussed their analysis of the benefits and the risks associated with the venture on the whole of Palmerston because their proposal involves the relocation of premises from one part of Palmerston to another. The individual objectors on the other hand are primarily concerned with the impact that a liquor outlet would have on their suburb of Durack, particularly the Fairway Waters estate. Consequently, while the Commission has limited its consideration of the impact of this application to the city of Palmerston, it must also take into account any particular circumstances that will impact more acutely, for better or worse, on that part of the Palmerston Community who reside or work closest to the proposed outlet.

## **Benefits**

135. The Commission finds that approving the application would result in an amount of \$300,000 being spent on the fit-out of the new premises and the three full time equivalent positions that were attached to the Gateway store would be retained.

136. Although we have loosely referred in this Decision to the “Fairway Waters Shopping Centre”, we acknowledge the statement of the owner Mr McCubbing “It is important to appreciate that the Centre does not have a supermarket and as such it should not be considered a “shopping centre”. Rather, it is more aptly named “a convenience node” which is directed at meeting the everyday needs of residents in the immediately surrounding suburbs”<sup>99</sup>.

137. Although the gourmet food offering might have attracted custom from further afield within Palmerston, without it, patronage of the store will most likely be confined to the residents of the immediately surrounding suburbs. There may be some passing trade from the residents of greater Palmerston returning home along Kirkland Road. Due to the lack of any ingress to the site from University Avenue, passing trade from the other direction is less likely.

138. The Applicants rely on their Cellarbrations branding and more diverse range of products to attract custom. However, even when their licence was located within the “destination” Gateway shopping complex, the Applicants were not able to compete against BWS. It is difficult to see why residents of Rosebery, Bellamack, Bakewell and Palmerston North would be attracted to purchase their liquor from these premises when there are a number of more convenient options closer to home, including BWS drive through outlets.

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<sup>99</sup> Exhibit 19 para 5

139. Leaving aside the itinerant drinkers camping around Marlow Lagoon and the bushland off Elrundie Avenue, the main group of people that would potentially benefit from this outlet are the residents of Durack, Marlow Lagoon and Driver where there are not currently any existing bottle shops. In August 2019, the Applicants had letter boxed the suburbs of Durack, Driver and Marlow Lagoon inviting residents to information sessions to discuss the substitution Application. Those sessions were held for 2 hours on 22 August 2019, 30 August 2019 and Saturday 7 September 2019<sup>100</sup>. At those three meetings, a total of only 10 people attended and it has not been suggested by the Applicants that there was a high degree of support shown for the establishment of a packaged liquor outlet at the site<sup>101</sup>. We have had regard to the petition organised by the Applicants<sup>102</sup> however the petition organised by Ms Gilpin<sup>103</sup> refers to the Parap Fine Foods concept so its weight is significantly reduced because we have found that cannot form part of the business model.
140. When the relative low level of support for the proposal is compared to the strident opposition from the objectors and their Local Government representative body, there is no compelling evidence to establish that this community would benefit by having more convenient access to packaged liquor products through the substitution of the Applicants licence to this location.
141. The Commission finds that the benefits of the proposed relocation of the licensed premises as specified in section 49(2)(e) of the Act are limited to the retention of the existing three staff positions and the employment opportunities associated with the \$300,000 investment in the fit-out.

## **Harm minimisation and reducing anti-social behaviour**

142. As has been discussed earlier, the Commission is required to consider the relevant objectives listed in section 49(2) aimed at minimising harm (a) safeguarding public order (c) and reducing or limiting increases in anti-social behaviour (j).
143. The Commission has found that there will be an increase in anti-social behaviour in the vicinity of the proposed liquor outlet<sup>104</sup>. This will likely take the form of drunken itinerants congregating outside the premises in the hope of persuading a sober person to purchase alcohol for them. Itinerants humbugging people for money, people fighting and swearing in public, criminal damage to shops and nearby residences and people drinking on the golf course or in the laneways or other secluded areas around Fairway Waters Shopping Centre, with a resultant increase in noise, disturbance and rubbish.

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<sup>100</sup> Exhibit 1 p145

<sup>101</sup> Transcript p 101

<sup>102</sup> Exhibit 10

<sup>103</sup> Exhibit 15

<sup>104</sup> See para 131

144. Although the location of this proposed bottle shop, so near to the drinking areas around Marlow Lagoon Recreation Park, could potentially attract more problem drinkers to move from Darwin to Palmerston, it is more likely that some part of Palmerston's existing cohort of itinerant drinkers would shift their focus to this more convenient outlet. On that basis there is unlikely to be any overall increase in the number of itinerant problem drinkers within Palmerston. They will just be spread over a broader area. It could be argued that the residents of Durack have no special right to be immune from the anti-social behaviour associated with irresponsible drinking which affects so many other parts of the Northern Territory. Why should Durack not shoulder part of the load? However, that argument fails to acknowledge the fact that because of the proposed outlets location so close to the attractive drinking sites, the Durack residents are likely to experience a significant increase in the level of alcohol-fuelled dysfunction within their community.
145. Furthermore, as the Commission observed in the Liquorland Decision, moving a licence to a likely hot spot for anti-social behaviour "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"<sup>105</sup>
146. Having been guided by the purposes of the Act, together with all the objectives specified in section 49(2) and having had regard to the limited benefits that the Community would derive through the relocation of this licence to the proposed site, along with our finding that there would be an increase in anti-social behaviour both within the suburb of Durack and Palmerston as a whole, the Commission is not satisfied that granting the substitution is in the public interest.
147. Furthermore the Commission having been guided by the purposes of the Act and having regard to the considerations listed in section 49(3), finds that the level of anti-social behaviour that would arise in the vicinity of the proposed packaged liquor outlet would be such as to cause undue offence, annoyance, disturbance and inconvenience to members of the community who reside nearby. As a result of these findings, the Commission is not satisfied, as required by section 51(b), that granting the application would not have a significant adverse impact on the community.
148. Accordingly, for the reasons outlined in this Decision Notice, the Commission has determined to refuse this application.

## **Notice of Rights**

149. Section 31 of the 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.

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<sup>105</sup> Liquorland Decision Notice dated 3 July 2020 p156

150. Section 112(3) of the 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  
5 October 2020

On behalf of Commissioners Coates, Dwyer and Hart