

# Director of Liquor Licensing

## Decision Notice

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

**LICENCE NUMBER:** 80900870

**PREMISES:** Liquorland  
Oasis Shopping Village  
Palmerston NT 0831

**APPLICANT:** Liquorland (Australia) Pty Ltd

**LEGISLATION:** Sections 46A, 110 of the *Liquor Act 1978* and section 334 of the *Liquor Act 2019*.

**DECISION OF:** Director of Liquor Licensing

**DATE:** 17 December 2020

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### DECISION

1. For the reasons set out below and in accordance with section 334(6)(a) of the *Liquor Act 2019*, as amended on 20 November 2020 (**the 2019 Act**), the Director of Liquor Licensing (**the Director**) has determined to approve the substitution of the liquor licence.
2. For the reasons set out below and in accordance with section 334(6)(b) of the 2019 Act the Director has determined to vary the conditions of the licence, as requested by the applicant.
3. Also for the reasons set out below, and also in accordance with section 334(6)(b) of the 2019 Act, the Director has determined to impose additional conditions on the liquor licence in respect of the CCTV system at the premises as well as a condition requiring the licensee, in certain circumstances, to ensure that customers purchasing takeaway liquor have a legitimate address as which to consume the liquor. A Concept licence condition will also be imposed.

### BACKGROUND

#### Application to the Liquor Commission (the Commission):

4. On 26 July 2018, Liquorland Australia Pty Ltd (**the Applicant**) lodged an application in respect of a liquor licence that had previously authorised the sale of liquor from premises known as the Berrimah Supermarket, located at 1145 Berrimah Rd, Berrimah prior to the demolition of the premises to make way for the construction of the Quest Berrimah Apartment Hotel. The licence was a "Store Authority" which authorised the sale of liquor for consumption away from the premises, essentially a grocery store takeaway liquor licence.
5. The application sought a transfer of the licence to the Applicant in accordance with section 41 of the *Liquor Act 1978* (**the 1978 Act**) and a substitution of premises to an alternative location in accordance with section 46A of the 1978 Act. The Applicant sought to substitute the liquor licence from the former Berrimah premises to premises situated at the Oasis Shopping Village (**Oasis**) at 15 Temple Terrace, Palmerston City. At the time of the applications the Applicant was operating a Coles supermarket at Oasis.

6. The same Oasis premises was previously occupied by Woolworths Group Limited (**Woolworths**), who operated a Woolworths supermarket at the location in conjunction with a BWS grocery store liquor licence. Woolworths vacated the premises in July 2017 and relocated the supermarket to new premises within the new development at Gateway Shopping Centre. At the time Woolworths applied for and was granted a grocery store liquor licence for the purpose of operating a BWS liquor outlet in conjunction with the Woolworths supermarket at Gateway.
7. Woolworths had conducted business from the Oasis premises for approximately 20 years prior to the move to Gateway. At the time Woolworths vacated the Oasis premises, Coles Supermarkets Australia Pty Ltd, the parent company of the Applicant, was already operating a supermarket with an attached Liquorland outlet in the nearby Palmerston Shopping Centre. Following Woolworths' departure Coles secured a lease over the Oasis premises and commenced the operation of a Coles supermarket.
8. The Applicant had previously sought a grocery store liquor licence to operate in conjunction with the Coles supermarket at Oasis by application lodged on 1 August 2017. That application was refused by the then Director-General of Licensing on 28 February 2018 on the basis the granting of the liquor licence was contrary to the moratorium on the grant of takeaway liquor licences. The moratorium was prescribed in section 24(2) of the 1978 Act and section 84(3) of the 2019 Act. The moratorium is in place until 31 August 2023 and may be extended.
9. The transfer application was approved by the former Director-General on 19 December 2018 and the Berrimah Supermarket licence was re-issued in the name of the Applicant. Once the transfer application had been approved, the application for the substitution of premises to Oasis and the application for variation of licence conditions was referred to the Commission for determination on 4 April 2019.
10. There were two objections to the application for substitution of premises, lodged by NT Police and City of Palmerston (**Council**). In addition, the Commission granted leave to the Australian Hotel Association (NT Branch) (AHA NT) (as it was then known) to appear and make submissions in relation to alcohol volume and density issues. No members of the public objected to the substitution application.
11. The hearing of the Applications before the Commission took place on 3 July 2019, 29 August 2019 and 28 April 2020. NT Police appeared in the hearing via counsel. City of Darwin did not appear in the hearing and advised that it relied on the written objection.
12. On 3 July 2020 the Commission published its Decision Notice setting out its reasons for refusing to approve the substitution of the licensed premises, pursuant to section 112(2)(b) of the 2019 Act. The Commission also noted that the Applicant had indicated it no longer intended to pursue the application pursuant to section 110 of the 1978 Act to vary conditions and dismissed the application.

#### **Application for Review by the NT Civil and Administrative Tribunal (NTCAT):**

13. On 30 July 2019 the Applicant lodged an initiating application for review of the Commission's decision by NTCAT pursuant to section 31 of the 2019 Act. The Applicant sought orders from NTCAT setting aside the Commission's decision and substituting a decision approving the substitution of the liquor licence from the former Berrimah Supermarket premises to the premises at the Oasis.

#### **FURTHER AMENDMENT OF THE LIQUOR ACT 2019:**

14. On 12 November 2020 the Legislature passed the Liquor Further Amendment Bill 2020. The further amendments to the 2019 Act came into force on 20 November 2020 following assent by Her Honour the Administrator. The purpose of the amendments is to authorise the Director of Liquor Licensing to expedite liquor licence applications that were lodged under the 1978 Act but which are yet to be finally determined.

15. The 2020 amendments inserted Division 3 – Expedited determination of applications under Liquor Act 1978. Division 3 includes new section 334 which provides, relevant to the application under consideration, the following provisions:

*334 Power of Director to expedite applications*

(1) *This section applies in relation to the following applications:*

(a) *an application for the substitution of licensed premises that:*

- (i) was made under 46A of the Liquor Act 1978 before its repeal; and
- (ii) was refused by the Commission; and
- (iii) is subject to a rehearing by NTCAT, under section 326(4) of this Act; and
- (iv) was not determined by NTCAT under section 75(2) and (2A) of this Act before the commencement;

16. Section 334(2) of the 2019 Act, as amended, provides that the Director must determine the applications that fall within the parameters of section 334(1) on an expedited basis within 30 days of the commencement of the amending legislation.

17. Section 334(1) applies only to applications for substitution of licensed premises. The requirements of sub-sections 334(1)(a)(i) to (iv) are cumulative, that is to fall within the bounds of the section an application must satisfy each of the requirements set out.

18. In terms of the application for the substitution of the Berrimah Supermarket liquor licence for the purpose of opening the proposed Liquorland Oasis liquor store the following facts are apparent:

- The Applicant lodged an application for the substitution of the Berrimah Supermarket liquor licence from the current premises to new premises – sub-section 334(1)(a);
- The application was made under the 1978 Act on 26 July 2018 – section 334(1)(i);
- The application for substitution was refused by the Commission by decision notice published on 3 July 2020 – section 334(1)(ii);
- The application is the subject of a rehearing by NTCAT following the Applicant filing an initiating application with NTCAT on 30 July 2020 – section 334(1)(iii); and
- The Application for review by NTCAT had not been determined prior to the commencement of the 2020 amendments to the 2019 Act – section 334(1)(iv).

19. It is abundantly clear that the application under consideration meets all of the requirements set out in section 334(1) of the 2019 Act, as amended by the 2020 amendments. As a consequence, and in accordance with section 334(2) of the 2019 Act as amended, the Director must determine the application on an expedited basis within 30 days of the commencement of the amending legislation, that is within 30 days commencing on 20 November 2020.

20. In determining the application, subsection 334(5) requires the Director must take into account the application as lodged, any objections lodged in relation to the application, any submissions made to, or evidence received by, the Commission or NTCAT in relation to the applications and any further information received by the Director under subsection 334(4).

21. Following determination of an application under section 334 the Director give the applicant a decision notice and must publish that decision notice. “Decision notice” is defined in the 2019 Act as follows:

*decision notice, for a decision, means a written notice setting out the matters required for a notice of decision under section 34 of the Northern Territory Civil and Administrative Tribunal Act 2014.*

22. Section 34(2)(c) of the Northern Territory Civil and Administrative Tribunal Act 2014 requires a decision maker must advise a person who has a right to receive the decision notice that the person has a right to request a statement of reasons for the decision.

## MATTERS TO BE TAKEN INTO ACCOUNT IN MAKING DETERMINATION:

23. Section 334(5) of the 2019 Act provides that the Director must determine the applications on the basis of the following information:
- a) *the applications as lodged;*
  - b) *any objections lodged in relation to the applications;*
  - c) *any submissions made to or evidence received by the Commission or NTCAT in relation to the applications;*
  - d) *any information received by the Director under subsection (4).*
24. As noted above, the Applicant sought a review of the Commission's decision by NTCAT. However, as of the date of termination of the review, NTCAT had not made any substantive determinations in respect of the outcome of the review. As a result NTCAT, apart from the initiating application, did not receive any submissions or evidence in relation to the application.

## CONSIDERATIONS BY THE LIQUOR COMMISSION

25. The background to the application by the Applicant for substitution of licensed premises that was heard and refused by the Commission is set out in paragraphs 4 to 12 above.
26. The Commission published a comprehensive Decision Notice in respect of the application and its refusal to approve the substitution. Following is a summary of that Decision Notice.

### **Evidence of the Applicant:**

#### Ms Marie Verschuer:

27. Ms Marie Verschuer, a social planner specialising in the area social and economic development, was engaged by the applicant to undertake an amenity audit and social impact assessment in respect of the application. She prepared two expert reports which were both included in the brief referred to the Commission. Ms Verschuer also gave evidence and was cross-examined at the hearing<sup>1</sup>. Ms Verschuer stated that it was clear that the demographic profile for the area around Oasis was significantly different from that of the NT as whole. She also noted that much of the information provided by NT Police and the Council is general in nature and does not specifically relate to the Application.
28. Amongst other matters, Ms Verschuer stated that, in her opinion:
- Store density in the Locality is 7 times less than that of the NT and the level of density is not excessive by standards used in other national and international jurisdictions.
  - The Store being internal to a shopping centre will have little amenity impacts on the surrounding area and will have less exposure to passers-by.
  - The Store will provide a full service supermarket/liquor store combination that is common in the NT and will help to support the visitation and viability of Oasis.
  - There are intervention initiatives in place that are working to reduce alcohol-related crime and harm and are effectively reducing supply to those most at risk of harm.
  - The proposed store is not a standalone store or a corner store. It will be located within an internalised and controlled city centre location, operated by a responsible licensee. As such the application is consistent with the recommendations of the Alcohol Policies and Legislation Review Final Report (**the Riley Review**).
29. In her reports and evidence before the Commission Ms Verschuer acknowledged that the harm caused by alcohol in Northern Territory is concerning but stressed that the demographic data suggested that Palmerston is not typical of the broader NT population and has a significantly different profile. She opined that there are greater benefits than risks associated with the

<sup>1</sup> Liquor Commission Decision Notice dated 3 July 2020 – Liquorland (Australia) Pty Ltd – paragraphs 25 to 35

granting of the Application for the Liquorland Oasis liquor licence. For the purpose of her impact assessment Ms Verschuer defined the community area likely to be impacted by the liquor licence to be a radius of 3km around the proposed premises.

30. The Commission found that "Whilst the statistical analysis provided by Ms Verschuer tends to portray the locality as significantly advantaged there are limitations as to the utility of some of the data upon which she relied. For example the fact that the locality has an overall lower proportion of Aboriginal people (11.3%) than the NT (25.5%) is meaningless. As was pointed out to Ms Verschuer during the hearing, the Aboriginal population is not evenly distributed across the Territory, when compared with the majority of Darwin suburbs a proportion of 11.3% of residents identifying as Aboriginal is at the higher level."<sup>2</sup>
31. Ms Verschuer's evidence also referred to economic benefits to consumers that would arise through the grant of the application, the applicant's record for responsible service of alcohol, the crime statistics and the risk mitigation strategies that would be implemented.

Mr Sean Stephens:

32. Mr Sean Stephens, an economist specialising in the economic impacts of urban development projects, prepared reports that were tendered into evidence before the Commission in support of the application and also gave evidence at the hearing<sup>3</sup>. Mr Stephens concluded that the proposed Liquorland store would operate in a manner wholly complementary to the role and function of Oasis as a supermarket-based shopping centre meeting the day-to-day needs of surrounding residents. He concluded further that that the proposed Liquorland store did not have attributes which would have any practical effect on overall levels of alcohol consumption, or the volume of packaged liquor sales and, as such, the proposed Liquorland Oasis will have no practical impact on overall volumes of alcohol sold in the surrounding trade area.
33. Mr Stephens was of the opinion the proposed store would generate a modest increase in local employment opportunities by providing 6 to 8 in-store jobs. He also projected the sales for the proposed Liquorland Oasis for 2021 to be in the order of \$2.2 million. Mr Des Crowe for AHANT questioned the accuracy of that estimate and suggested that the level of sales were more likely around \$4 million. Mr Stephens considered that estimate to be high and way above what was achievable.
34. The Commission accepted the overall thrust of Mr Stephens' evidence that due to a national trend of declining alcohol consumption that the proposed Liquorland Oasis outlet would have no practical impact on the overall volumes of alcohol sold in the surrounding trade area<sup>4</sup>.

Ms Nancy Morley:

35. Ms Nancy Morley, the Store Manager of Coles Supermarket, Oasis Shopping Village, submitted an affidavit in support of the application and gave evidence before the Commission. She stated that she had been approached by her customers who expressed views to the effect that an adjoining Liquorland would offer convenience to them. Ms Morley also submitted eight letters of support from other tenants of Oasis.

**Evidence of the Objectors:**

Objection by City of Palmerston (Council):

36. Council lodged an objection to the substitution application on grounds that the approval of substitution will adversely affect the amenity of the neighbourhood where the premises will be located as relocating a licence from the Berrimah Supermarket to Oasis will increase the number of liquor licences in Palmerston and exacerbate harms associated with alcohol in the community.

<sup>2</sup> Ibid at paragraph 30

<sup>3</sup> Ibid at paragraphs 35 to 38

<sup>4</sup> Ibid at paragraph 37

37. The objection noted that Oasis is currently the only significant shopping complex that offers families and other shoppers, an opportunity to shop without the presence of a liquor outlet. The objection referred to anecdotal evidence suggesting that the associated anti-social behaviour that is prevalent in the other shopping centres with liquor outlets is not present currently at Oasis. In addition, Oasis includes a number of facilities, that attract youth and families to this shopping centre, including the pharmacy, gymnasium, takeaway outlets and cafés.
38. The objection by Council acknowledged that there are no publicly accessible statistics on crime rates specific to the locality therefore data must be taken from the closest available source which in this case is the Northern Territory Police crime data for Darwin<sup>5</sup>.
39. Prior to the Public Hearing before the Commission, Council advised that whilst Council maintained its objection it did not intend to take any further part in the proceedings.

Objection by NT Police:

40. Superintendent Antony Deutrom lodged an objection to the application on behalf of NT Police. His evidence and the Commission's findings are set out in some considerable detail in the Commission's decision Notice at paragraphs 42 to 51.
41. Superintendent Deutrom submitted that the impacts on the Northern Territory from alcohol are well documented and most recently evidenced through the Alcohol Policies and Legislation Review culminating in the Northern Territory Alcohol Harm Minimisation Action Plan 2018 - 2019. He stated that Palmerston Division of NT Police deals with 81,008 incidents per year, 10,979 of which related to anti-social behaviour (ASB), 7,199 of which were alcohol related and 3714 of which were domestic-violence related.
42. In Superintendent Deutrom's opinion an increase in alcohol availability by the addition of another takeaway liquor licence at Oasis could further impact negatively on these figures. He stated that with the existing density of liquor licences in the area, the application does not demonstrate a need for an additional takeaway liquor outlet to satisfy public interest as there are numerous licensed premises within short distances from the proposed site, including a Liquorland outlet within 237 metres from the proposed new site.
43. Superintendent Deutrom gave evidence that since the closure of the BWS store there had been a noticeable decrease in anti-social behaviour in the immediate area in and around Oasis, including of the adjoining escarpment and laneway. He stated that since the removal of the BWS store problem drinkers and disturbances had been almost non-existent in and around the Oasis and the common community commentary to Police was that it had become a pleasant and safe place for the community to attend and undertake their shopping.
44. In a statutory declaration lodged by Superintendent Deutrom in support of the objection he deposed that there had been a 47.7% decrease in the number of incidents attended to by Police at Oasis in the two years following the closure of BWS store. He did however acknowledge there were shortcomings with the statistical data upon which he relied as they recorded all job types where Police attendance was requested and did not specify whether there was any definite alcohol involvement with the incidents for which Police attendance was required.
45. Counsel for the Applicant submitted that an examination of the Police data demonstrates that the number of incidents attributed to Oasis were already declining prior to the BWS closure in 2017. The Commission did not accept that submission and stated:

*"However in neither case was the downward or upward trend consistent over that five-year period so it is difficult to draw any reliable conclusions from this evidence".<sup>6</sup>*

<sup>5</sup> Crime Statistics for Palmerston are released every month at <https://pfes.nt.gov.au/police/community-safety/nt-crime-statistics/palmerston>

<sup>6</sup> Ibid at paragraph 53

### Preliminary Issues:

46. The Commission was required to consider a number of preliminary issues in respect of the legislative restraints applicable to substitution applications generally. The Commission specifically raised concerns as to the extent of its powers to approve a substitution of licensed premise subject to conditions.
47. However, the Liquor Act Amendment Bill 2020 was passed on 26 March 2020 and clarified a number of issues in respect of the substitution of liquor licences, including that the Commission was authorised to approve a substitution application subject to conditions.

### Commission's Assessment of the Application:

48. At pages 22 to 23 of its Decision Notice the Commission set out the purposes of the Act and the matters that it was required to consider under section 49, public interest and community impact.
49. Having carefully considered the Applicant's submissions as to the satisfaction of public interest and community impact requirements, the Commission concluded that the application supports the objectives of the following provisions of section 49(3) of the Act:
  - (b) the geographic area that would be affected;
  - (d) the people or community who would be affected;
  - (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; and
  - (i) the community impact assessment guidelines issued under section 50;
50. In respect of section 49(3)(c) the Commission, having accepted the Applicant's submissions in respect of the retail catchment for the proposed Liquorland outlet, expressed its difficulty in understanding the motivation behind the Applicant's decision to establish a second Liquorland outlet in the Palmerston CBD within 300 metres of an existing Liquorland store. The Commission noted that it was not clear, on the evidence before it, what benefits the local community would derive from the Applicant establishing another supermarket within an older, smaller complex so close to its existing store. The Commission accepted the evidence of Ms Morley who acknowledged that Coles Oasis was trading below expectations and noted her view that grocery sales would increase by 5% if a licence was granted<sup>7</sup>.
51. The Commission did accept the evidence of Ms Verschuer that there would be a direct employment benefit in the form of two full time employees if the Application were to be granted. However, it did not accept that there would be an additional 2 part-time and 4 casual positions given the modest level of sales predicted by Mr Stephens of \$2.2 million. The Commission concluded that on the evidence before it, it was not satisfied that there would be any significant level of additional employment over and above the two full time employees.
52. The Commission did accept that a number of other tenants at Oasis who were supportive of the application in the hope that increased patronage at Coles Oasis with a Liquorland store attached, would have flow on benefits for their businesses. The Commission noted however that the reality behind the decline in custom at Oasis was the decision by Woolworths to relocate its store to the new Gateway development and that a second Coles store in close proximity to its other outlet was never going to fully compensate for the loss of Palmerston's main Woolworths Supermarket<sup>8</sup>. The Commission did accept however that granting the application would result in some increase in traffic at Oasis which may provide limited flow-on benefits to the other traders.
53. Section 6(2)(o) of the 1978 Act required the Commission to consider the objective that any sale of additional liquor due to the grant of a licence or the relocation of restrictive conditions will

<sup>7</sup> Ibid at paragraph 86

<sup>8</sup> Ibid at paragraph 90

not increase anti-social behaviour. In respect of that objective, the Commission referred to the evidence of Superintendent Deutrom that there had been a decline in anti-social behaviour since the departure of the BWS liquor outlet<sup>9</sup>. In response counsel for the Applicant submitted it is entirely likely that the behaviour and the number of incidents have increased elsewhere in Palmerston. That is, the problems have not disappeared, they have just moved on to other areas.

54. The Commission accepted that was a possibility but the submission overlooked the finite resources available to Police and the fact that alcohol-related anti-social behaviour is impacted not only by the overall numbers of people involved but also by the number of different “hot spot” locations where these incidents are occurring.<sup>10</sup>
55. On the evidence before it the Commission concluded that it is highly likely that granting the application would result in the Oasis once again becoming a “hot spot” for anti-social behaviour and create risks to public order and safety due to the numbers of people that would be attracted to the premises or an area adjacent to those premises<sup>11</sup>.

#### **Ratio of Liquor Outlets per Capita:**

56. The Commission confirmed that in considering the density of takeaway liquor outlets in the trading area of the proposed premises it must consider density as a concept involving both outlet numbers and sales volume from each outlet, as required by sections 49(3)(g) and 49(3)(h) of the Act.
57. The Commission conducted a detailed analysis of the ratio issues<sup>12</sup>, including consideration of the expert report provided to the Commission by Dr Michael Livingston<sup>13</sup> and the report tendered by Dr John Henstridge on behalf of the Applicant<sup>14</sup>. The Commission concluded that in the case of the proposed Liquorland Oasis outlet, it was not faced with a massive increase in density and did not consider it necessary to make a determinative ruling on the basis of the limited evidence before it concerning this issue<sup>15</sup>. The Commission did note however that it found the observations of Dr Livingston, referred to in paragraph 132 of its Decision Notice to be persuasive, namely that *“changes in ease of access to alcohol are likely to have only small impacts on well-resourced drinkers (e.g. those with access to a car), but may have more effect on those who are marginalised or disadvantaged”*.

#### **Community Impact Assessment Guidelines:**

58. At paragraph 135 of its Decision Notice the Commission set out the Community Impact Assessment Guidelines and referred to the significant cross over between the matters listed in the Guidelines and the factors the Commission is required to take into account in section 49(3).
59. In relation to the requirement that the Commission consider the potential harm to people attending nearby community facilities such as hospitals, schools and youth facilities the Commission accepted the Applicant’s submissions that a bottle shop had been operating from the same location for 20 years without any significant impact on the facilities listed in the guidelines. Of significance, the Commission also took account of the fact that there have been no objections lodged by any of those facilities or members of the public<sup>16</sup>.

<sup>9</sup> Ibid at paragraph 95

<sup>10</sup> Ibid at paragraph 95

<sup>11</sup> Ibid at paragraph 101

<sup>12</sup> Ibid at paragraphs 117 to 133

<sup>13</sup> Dr Livingston is a Senior Research Fellow at La Trove University

<sup>14</sup> Dr Henstridge is an Adjunct Professor in Mathematics and Statistics, University of Western Australia

<sup>15</sup> Liquor Commission Decision Notice dated 3 July 2020 – Liquorland (Australia) Pty Ltd at paragraph 133

<sup>16</sup> Ibid at paragraph 138

60. The Commission considered the level of consumption of liquor within the identified 5km radius trade area of the proposed Liquorland Oasis outlet<sup>17</sup> and concluded on the evidence before it that the existing level of alcohol consumption within the locality is no less than the average level of consumption for the Northern Territory as a whole.
61. In terms of crime statistics, the Commission accepted that “there are grounds for cautious optimism that alcohol-related crime rates may be starting to decline across the Northern Territory however they are still significantly higher than elsewhere in Australia and we do not accept that Palmerston is immune from this type of offending.”<sup>18</sup>

### Conclusions:

The Commission’s findings and conclusions are set out in paragraphs 147 to 158 of its Decision Notice and are summarised as follows.

62. The Commission found that granting this application would marginally increase the density and or ratio of packaged liquor outlets in the locality and was not convinced that Palmerston residents are consuming alcohol at a significantly lower rate than the rest of the Northern Territory. The Commission found further that the social and economic costs and harms of alcohol consumption in the NT apply to Palmerston. However, the Commission did not find that granting the substitution application would arrest the ongoing National and Territory wide declining trend in alcohol consumption.
63. The Commission accepted there would be economic benefits through the creation of at least two full time shop assistant positions and limited flow on economic benefits to the other store holders at Oasis complex through increased foot traffic. The Commission also took into account that existing premises will be used for the proposed liquor store resulting in little benefit for the construction industry.
64. In response to the Applicant’s submission that approval of the substitution application would enhance the convenience for grocery shoppers at Oasis by being able to do all their shopping in one place the Commission referred to section 50(3) of the 2019 Act which provides:
- “The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community”.
65. The Commission noted that were the application before it one associated with a proposal to establish a new Coles Supermarket in a new suburban development it would accept that, despite section 50(3), there would be obvious consumer benefits in having a one-stop shopping experience close to home. The Commission noted however that there is already a Coles/Liquorland option for consumers within 237 metres of Oasis and that there was no compelling evidence before it to suggest that consumers who want to do their shopping at the one location cannot achieve this by attending the Palmerston Shopping Centre Coles/Liquorland store. Alternatively customers could attend either of the Woolworths/BWS stores at Gateway or Bakewell.
66. The Commission referred to the objections lodged by both Police and the Council in respect of the positive community feedback regarding the option of shopping for groceries at a complex that does not have a liquor outlet. Of significance, the Commission stated that if the Applicant wanted to dispute that evidence, it could have conducted an objective market survey to gauge the views of its customers on this issue<sup>19</sup>.
67. Again of significance in terms of the Applicant’s change of plans for the proposed Oasis liquor outlet, the Commission stated that in reaching its determination to refuse the substitution application it took into account that there will be no additional choice of products for consumers as, for example, might have been the case if Coles had decided to open one of its Vintage Cellars

<sup>17</sup> Ibid at paragraphs 139 to 142

<sup>18</sup> Ibid at paragraph 146

<sup>19</sup> Ibid at paragraph 149

outlets at this location.<sup>20</sup> Against that finding the Commission was not persuaded that there were any real benefits for consumers in having another Liquorland so close to the existing outlet.

68. The Commission concluded, primarily on the evidence of Superintendent Deutrom, that whilst the BWS Oasis store was operating Oasis was a significant hot spot for anti-social behaviour both in and around Oasis, including the adjoining escarpment and laneway. The Commission found that whatever the reason it was clear that the BWS at Oasis attracted a demographic that was prone to anti-social behaviour and required regular police intervention.
69. The Commission referred to the Applicant's proposed mitigation strategies to ensure there was no recurrence of the previous problems associated with Oasis and noted that, apart from the refurbishment of the centre and redesigned carpark with improved lighting, there was nothing in the mitigation strategies that would not have been likely used by Woolworths when it was operating a BWS store at Oasis.
70. The Commission accepted that Coles has a good reputation as a responsible liquor licensee in the NT for compliance with their obligations under the Act and for their adherence to Responsible Service of Alcohol (RSA) protocols. However, as one of the largest providers of packaged liquor in the NT, history has unfortunately shown that such measures have limited utility in curbing the harmful consequences of alcohol misuse in the community. The Commission noted that view was reinforced by the affidavit of Superintendent Deutrom in which he deposed that the existing Liquorland outlet at Chung Wah Terrace continues to be one of the major anti-social hot spots for Palmerston Police.
71. The Commission concluded, on the evidence before it and having regard to its long history of anti-social behaviour associated with the former BWS liquor outlet, that restoring a licence to Oasis would result in it once again becoming a hot spot for anti-social behaviour. Further, that this would impact on the capacity of Police to effectively respond to these types of incidents for a greater number of locations and lead to a greater level of anti-social behaviour within the Palmerston locality than currently exists.
72. For the reasons set out in its Decision Notice the Commission determined that it was not satisfied that granting the substitution application was in the public interest. In addition, and also as a result of the findings, the Commission was not satisfied, as required by section 51(1)(b) of the Act, that granting the application would not have a significant adverse impact on the community.
73. In accordance with section 112(2)(b) of the 2019 Act the Commission refused the application for substitution of premises.

## FURTHER SUBMISSIONS ON BEHALF OF THE APPLICANT

74. On 20 November 2020 the amendments to the 2019 Act commenced and new section 334 came into effect. On that day the Director wrote to counsel for the Applicant and, pursuant to section 334(4)(b)(i) of the 2019 Act, requested the Applicant to provide the Director with any further materials or information that it wished to be taken into account in determining the application.
75. On 27 November 2020 the Applicant's legal representative, Ward Keller, forwarded to the Director further submissions and materials in support of the application for substitution of premises. Following is a summary of those submissions.

### Consumer benefit:

76. The Applicant proposes to change the brand of its proposed store to Vintage Cellars brand rather than the originally intended Liquorland. The Applicant submits that there are differentiating features between the proposed Vintage Cellars store and the Liquorland store that was originally proposed and that the proposed change of brand and consequential change of range of liquor products squarely addresses a number of issues raised by the Commission in its Decision Notice.

<sup>20</sup> Ibid at paragraph 149

77. The Applicant notes that the Liquor Commission accepted at paragraph 37 of its Decision Notice that if the application were granted it would not lead to any increase in the sale of alcohol in the locality. The Applicant submits that it must follow that the Liquor Commission accepted that the grant of the licence would not lead to an increase in alcohol-related harm in the locality.
78. The Applicant submits that the Commission refused the application on the basis of concerns raised by NT Police that the opening of a new Liquorland outlet at Oasis may result in the migration of anti-social behaviour from elsewhere in the locality.
79. The Applicant also refers to paragraph 149 of the Commission's decision in which the Commission noted that the application would have had "...obvious consumer benefits..." if the proposal were for a new Coles in a new development. The Commission went on to say that:
- "We have also taken into account that there will be no additional choice of products for consumers as for example, might have been the case if Coles had decided to open one of its Vintage Cellars outlets at this location. On the evidence before us, we are not persuaded that there are any real benefits for consumers in having another Liquorland so close to the other [Liquorland] outlet."
80. The Applicant submits the proposed change of branding and range for the proposed store directly responds to those observations of the Commission and that there is a significant consumer and public benefit by the introduction of a premium national brand, such as Vintage Cellars, into Palmerston both in terms of choice and the amenity of the Oasis shopping area.
81. The Applicant notes that the Commission previously recognised the amenity and the quality of Vintage Cellars stores in a previous Decision Notice where it stated:
- "... the [Vintage Cellars] premises have now been refurbished to a high standard and present as a high quality bottle shop, promoting quality wines and liquor consistent with its licence concept<sup>21</sup>.
82. The Applicant also refers to a decision of the Licensing Court of South Australia<sup>22</sup> that referenced the amenity of Vintage Cellars stores in which the Court stated:
- "I think it is likely that the creation of a smallish boutique liquor outlet of the type proposed would add to the attractiveness of the city and in particular to the Hutt Street precinct and I so find."
83. In a further matter determined by the Licensing Court of South Australia<sup>23</sup> the Court made the following observation in respect of a Vintage Cellars proposal:
- "I think that the creation of a boutique liquor outlet of the type proposed will add to the attractiveness of the area and will fulfil the object of the Act directed towards the sale of liquor being for the benefit of the community as a whole."
84. The Applicant states that, were the substitution to be approved, the premises at Oasis would be only the second Vintage Cellars store in the Northern Territory and one of only 20 Vintage Cellars stores in Australia that are associated with a Coles supermarket.

### **Economic Benefits:**

85. The Applicant submits that the benefits associated with the introduction of a Vintage Cellars store to Palmerston are significant, entailing a direct investment in the region of \$1.5 million, including \$800,000 in fit-out costs. The Applicant also notes the creation of additional local employment opportunities should the application be approved. The Applicant also submits that the addition of a Vintage Cellars outlet will provide opportunities for Oasis to capitalise on the \$8 million refurbishment undertaken in 2015.

<sup>21</sup> Liquor Commission Decision Notice dated 11 August 2020: Vintage Cellars 1/44 Cavenagh Street at paragraph 21

<sup>22</sup> Re Liquorland [2011] SALC 27 at [65]

<sup>23</sup> Liquorland (Aust) Pty Ltd [2012] SALC 42 at [81]

86. The Applicant has also agreed to fund, at its own cost, \$50,000 worth of improvements and upgrades to the lighting and CCTV to improve security and surveillance in the immediate shopping centre and the surrounds including laneways and down the side of Chung Wah Terrace. In terms of economic benefit, the Applicant states that it will aim to support local suppliers, including Indigenous suppliers, and will undertake to stock premium local products.
87. Further submissions lodged by the Applicant include correspondence provided by 22 current business tenants in Oasis. Of those, 20 are supportive of the opening of Vintage Cellars outlet. The remaining two tenants were neutral on the issue. The comments from the tenants of Oasis Shopping Centre are set out in full later in this Decision Notice.
88. In addition, the Applicant sought and received comments from the management of Oasis and its service providers. Those comments are also set out under the heading "Considerations".

### **The Palmerston City Centre Masterplan 2015:**

89. The Applicant refers to the following extracts from the Palmerston City Centre Masterplan 2015:
- "The performance of retail elements within the city centre becomes an important catalyst in the ability to deliver a revitalised and vibrant city centre. Without investment and confidence in the city centre, no revitalisation is possible."
- "Beyond the boulevard, the opportunity for a variety of place brand precincts or destinations throughout the city centre can assist in incubating these new opportunities."
90. The applicant notes that the Council's Municipal Plan for 2020/2021 has an objective that:
- "Palmerston is a destination city for employment, it is a place where businesses are encouraged to set up and grow."

### **Demographic Market:**

91. The Applicant submits that the concerns raised by the Commission regarding the possibility of existing anti-social behaviour migrating to Oasis are significantly addressed by the proposal to operate a Vintage Cellars outlet as the target market does not include people likely to engage in that type of behaviour. The Applicant also notes that it has successfully operated a Vintage Cellars outlet in Darwin for several years with no significant anti-social behaviour issues.

### **Community Support:**

92. In response to the Commission reference to the absence of "*an objective market survey to gauge the views of its customers on this issue*"<sup>24</sup> the Applicant commissioned Kookaburra Consulting to conduct a survey of over 450 Oasis customers regarding the proposal to operate a Vintage Cellars outlet at the premises. A copy of the report setting out the results of the survey is attached at Annexure A.

### **Proposed additional licence conditions:**

93. The Applicant has stated that, should the substitution application be approved, it will consent to the following additional licence conditions being imposed on the liquor licence:
- a) All spirits to be displayed behind lockable glass cabinets accessible only by authorised staff;
  - b) No sale of cask wine;
  - c) A security guard must be on duty at the following times:
    - (i) Thursday 5 pm – 10 pm;
    - (ii) Friday 10am -10 pm; and
    - (iii) Saturday 9 am -10 pm.

<sup>24</sup> Decision Notice of the Liquor Commission dated 20 September 2019 – Liquorland (Australia) Pty Ltd at paragraph 149

- d) No external promotion, advertising or incentives which encourage excessive or irresponsible consumption of liquor;
- e) CCTV is to be maintained in all publicly accessible areas including entry and exit points from opening time until one hour after the premise is required to close;
- f) CCTV footage to be retained for 28 days;
- g) The licensee shall keep a register that records any incidents of minors attempting to purchase alcohol, suspected secondary supply to minors, refused sales to intoxicated persons and complaints made by members of the public;
- h) At least two team members to be on duty at all times while the store is open to the public; and
- i) Except where otherwise restricted, liquor will only be sold during the opening hours of the adjoining Coles Supermarket.

**Public interest requirements and community impact guidelines:**

- 94. The Applicant submits that there is a strong level of support amongst the tenants of Oasis for the proposed Vintage Cellars store given the positive effect of increased patronage at the premises. In addition, the landlord of Oasis is supportive of the proposed Vintage Cellars store and does not anticipate any increase in anti-social behaviour at Oasis.
- 95. The Applicant submits that the proposed Vintage Cellars store represents a completely new offer for Palmerston and can be differentiated from all other retail liquor outlets in Palmerston. Further, there is only one other store in the NT that is comparable with the proposed Vintage Cellars store and that is the Vintage Cellars store located in the Darwin CBD.
- 96. The Applicant submits that the proposed Vintage Cellars store is a premium liquor and wine specialist store proposed to be co-located with a full-scale Coles supermarket. The Applicant acknowledges that there are a number of existing retail liquor outlets in Palmerston and submits that the proposed Vintage Cellars would bring a unique service offering as a specialist store catering to the contemporary consumer trend of premiumisation of liquor consumption. In addition, combined liquor and grocery shopping will provide a destination/single purpose shopping trip.
- 97. The Applicant submits that the proposed Vintage Cellars store is unlikely to cause harm or ill-health to people, or any group of people given the following factors:
  - a) Whilst the Applicant acknowledges that there are pockets of disadvantage in Palmerston this constitutes a minority of the population in an otherwise socio-economically advantaged locality.
  - b) The proposed Vintage Cellars store will operate in the same manner as the Vintage Cellars store in the Darwin CBD is currently operating and will:
    - (i) be a high-end standalone store;
    - (ii) be aimed at servicing customers seeking a more refined product and shopping experience; and
    - (iii) specialise in fine wine and service the more than 8,000 Vintage Cellars Wine Club members in the Territory;
  - c) Vintage Cellars stores are typically 'less risky' given:
    - (i) its usual customer is more sophisticated and mature compared to Liquorland and other retail liquor outlets;
    - (ii) the average spend per transaction at Vintage Cellars stores is much higher than Liquorland (\$46 at a Vintage Cellars store versus \$32 at a Liquorland); and
    - (iii) Overall Vintage Cellars provides a more premium product and service.

98. For the reasons that follow the Applicant submits that the new information that it has provided demonstrates that the application merits approval regardless of the decision of the Liquor Commission.
99. The Applicant is now proposing to change the brand of its proposed store to Vintage Cellars. That is, should the application be approved, rather than opening the originally intended Liquorland store, the Applicant will open a Vintage Cellars store in Oasis Shopping Village ('Oasis'). In relation to the layout, appearance and operation of the proposed Vintage Cellars Store the Applicant lodged a statement prepared by Ms Josephine Mangini dated 27 November 2020.

**Statement of Ms Josephine Mangini:**

100. Ms Josephine Mangini, Operations Manager Vintage Cellars for Coles Liquor, states that in her role she is responsible for sales, profit, people and resourcing and strategic outcomes for the Vintage Cellars brand across Australia, including the Northern Territory. She holds an Advanced Diploma in Business Management from the University of Melbourne and a Bachelor of Arts (Journalism) from the University of Adelaide. She has previously been responsible for the management of all Liquorland stores in the Northern Territory as NT State Manager.

The Vintage Cellars brand:

101. Ms Mangini states that Vintage Cellars is Coles Liquor's fine wine and spirit specialist and the brand is known for its range of wine, premium spirits and craft beer. Vintage Cellars stores target the premium liquor market, offering a selection of wine, boutique spirits and craft beers which are not available at Liquorland, first CHOICE or the wider packaged liquor market. Typically 90% of floor space at a Vintage Cellars outlet is dedicated to wine and store stocks are generally comprised of 65% wine, 15% beer and 20% spirits. More specifically, Vintage Cellars Darwin store holds 15% more stock by comparison to Liquorland Palmerston.
102. Ms Mangini states that if the substitution application is granted, the proposed Vintage Cellars Oasis will become the first store in the Northern Territory to feature Vintage Cellars new store design, including a more distinguished brand that aims to appeal to a most discerning customer.

Vintage Cellars customers:

103. Ms Mangini states that Vintage Cellars stores are designed to attract customers 35 years old and above and, typically customers in the older population bracket who wish to spend money on good wine. She states that the typical Liquorland customer knows what they are buying and will generally purchase a small number of products to consume soon after buying whereas an average Vintage Cellars customer will purchase four to six bottles of premium wines in one visit, often for cellaring or a special occasion.

Vintage Cellars Oasis:

104. Ms Mangini states, should the substitution application be approved, that Vintage Cellars Oasis will endeavour to ensure that its product range will appeal to a more sophisticated clientele, will not target young people and will focus on red and white wine. She notes that Vintage Cellars stores only stock a very small range of ready-to-drink products in comparison to other brands which have a much larger range. Coles Liquor has a number of Vintage Cellars stores co-located with a Coles supermarket across Australia, with these stores sharing the following characteristics:

- The majority of trade is from people residing within a 10-minute drive of the store;
- Customers spend on average above \$40 per transaction;
- Wine is the most commonly purchased item, accounting for 70% of all purchases; and
- The most common customers are males over the age of 50.

Customer feedback:

105. Ms Mangini states that since the Coles Supermarket opened at Oasis in 2017, staff have regularly been approached by customers asking when a liquor store would open and have expressed views that:
- An adjoining liquor store would offer convenience to them;
  - It is inconvenient to have to travel to another location to be able to buy liquor; and
  - If an adjoining liquor store was opened, they would buy their liquor at the same time as shopping at the Coles Supermarket rather than shopping elsewhere.
106. Ms Mangini notes that a customer survey was conducted between April and June 2020 for customers of Coles Supermarket Oasis on 13 potential areas of improvement. For the 233 shoppers surveyed the three most significant areas of improvement identified by customers were to have a bottleshop/liquor store adjacent to the supermarket (26.2%), better shops/retailers in the centre near Coles (21.9%) and car parking (19.3%).

Economic and community benefits:

107. Ms Mangini submits that the proposed Vintage Cellars Oasis will provide the benefit of added convenience for customers of the Oasis by allowing them to purchase liquor while also shopping for their weekly groceries and household needs. She states that the proposed store will create six new employment opportunities in the local area, three full/part time staff and two to three casuals, with additional staff being employed for busy trading periods such as Christmas, equating to more than \$250,000 of total employee costs per year.
108. She states that this project represents an overall capital investment of nearly \$1.5m into the Northern Territory economy, including an \$800,000 fit-out of the proposed store with this economic benefit flowing directly to local NT contractors who will be utilised for this work. Ongoing rent payable under the Vintage Cellars lease is significant and in addition to the payment of holding rent for the proposed liquor outlet area since 2017.
109. Ms Mangini submits that the proposed Vintage Cellars store will improve the economic prospects of the other businesses located in the Oasis Shopping Village, which she understands have suffered significant economic hardship since the closure of BWS in 2017. The addition of a Vintage Cellars outlet will also improve the ongoing viability of the existing Coles Oasis Supermarket which has seen a 40% drop from its original forecast sales. Ms Mangini stresses that as the anchor tenant, the ongoing operation of the Coles Supermarket is critical to the viability of the Oasis Shopping Village. She states further that the proposed Vintage Cellars store should also help the Oasis Shopping Village to fully capitalise on the \$8 million refurbishment it undertook in 2015.
110. In addition Ms Mangini states that Coles Liquor has agreed to fund at its own cost \$50,000 worth of improvements and upgrades to the lighting and CCTV to improve security and surveillance in the immediate shopping centre and the surrounds including laneways and down the side of Chung Wah Terrace. Coles Liquor also aims to support local suppliers in the communities where it operates, including Indigenous suppliers. Accordingly, the proposed Vintage Cellars Store has undertaken a program of work that will aim to stock premium local and Indigenous products such as beers from One Mile Brewery and Green Ant Gin.
111. Ms Mangini notes that Coles has a dedicated Indigenous engagement strategy for the Northern Territory, with a focus on increasing Indigenous team member representation and improving retention. Coles has partnered with Aboriginal Employment Strategy to support the employment strategy and provide local input into sourcing, training and supporting Indigenous job seekers as team members. She also notes that Coles invested approximately \$130 million in the community during the 2020 reporting year including cash donations, time and in-kind donations made by Coles group companies to community causes across Australia.

Security features of the store:

112. Ms Mangini states that Coles Liquor is committed to implementing the following site-specific security measures to ensure that any impact on the community is minimised:
- Security film on external glass;
  - Bright lighting throughout the store;
  - An alarm system which is monitored off-site; and
  - The entrance to the mall area of Oasis will have electronic, sliding glass doors which will act as a deterrent to potential thieves and eliminate the risk of "snatch and grab" theft.
113. Ms Mangini submits that these additional security measures should minimise the instances of theft or anti-social behaviour and may lessen the impact of the store on the local community and sensitive premises.
114. Ms Mangini submits that the security measures now put in place at Coles Liquor stores is at the forefront of global best practice. In addition, Coles Liquor has implemented a system of targeting theft in store using an online incident platform known as 'Auror' which will be utilised at Oasis and which she states have produced outstanding outcomes in minimising store theft. Coles Liquor will also provide security pendants to Team Members employed at the store.
115. In Ms Mangini's submission the security and harm minimisation policies described above will make it very unlikely that the operation of the store will have any adverse impact on the local community.

Regulator contacts, theft and incident rates at Vintage Cellars stores:

116. Ms Mangini states that internal data indicates that Vintage Cellars stores experience lower levels of regulator contacts, theft and threatening incidents when compared to Coles Liquor's other branded liquor stores, such as Liquorland. The following statistics provide a snapshot of the average number of regulator contacts, theft and threatening incidents that occur at Vintage Cellars stores when compared to other Coles Liquor outlets:
- Vintage Cellars stores experience nearly 40% fewer regulator visits.
  - Vintage Cellars stores experience 50% fewer instances of theft.
  - Vintage Cellars stores experience 40% fewer threatening incidents, with Vintage Cellars Darwin only experiencing one threatening incident so far in the 2021 Financial Year.

Responsible service, supply and promotion of alcohol:

117. Ms Mangini states that Coles Liquor takes the responsible service of alcohol very seriously and is committed to building a reputation in the NT packaged liquor retail market for its stores, including Vintage Cellars, having a minimal impact on the community and facilitating the sale of alcohol in a responsible way. She states that Coles Liquor is an experienced licensee in the Northern Territory and believes that its harm minimisation policies ensure that alcohol is sold from Coles Liquor stores in a responsible manner.
118. Annexed to Ms Mangini's statement is a copy of Coles Liquor's Northern Territory Policy for Fake or False. She also notes that Coles Liquor is a signatory to the Alcohol Beverages Advertising Code (ABAC). She states that Coles Liquor is a founding member and key contributor to DrinkWise and a member of key industry bodies, namely Alcohol Beverages Australia and Retail Drinks Australia.
119. Ms Mangini states that Coles Liquor played an instrumental role in establishing the Palmerston Liquor Accord in 2018, including personal correspondence between herself and local Police, and that the proposed Oasis Vintage Cellars will become an active member of this Liquor Accord. She notes that Coles Liquor has extensive experience engaging in Local Liquor Accords in the NT and via this forum it has implemented a variety of initiatives targeted at reducing alcohol-related harm, for example limiting the sale of cask wine.

Specific harm reduction measures to apply at Oasis Vintage Cellars:

120. Ms Mangini advises that the following restrictions and standards will be implemented at the proposed Oasis Vintage Cellars store should the substitution be approved:
- No shopper docket deals;
  - No cask wine sales;
  - All spirits behind locked glass cabinets;
  - State of the art CCTV cameras covering the entire store;
  - Store security guards at key times;
  - Rigorous reporting to store management and to Vintage Cellars head office and, if necessary, NT Police, of any incidents that occur at the store;
  - Store management who actively contribute to the Palmerston Liquor Accord; and
  - Staff trained to deal appropriately and sensitively with the cultural and social needs of the community.

Coles Liquor Team Member training:

121. Ms Mangini advises that Coles Liquor has a strict RSA policy and that failure to adhere to the policy may result in an employee receiving a warning or, if the breach is sufficiently serious, having their employment terminated. Each team member who is likely to spend time on the store floor must undertake Coles Liquor's induction training, as well as completing a RSA course. All staff are required to confirm in writing that they understand their obligations to comply with liquor licensing laws and that a breach of those obligations could result in their dismissal from employment.
122. Ms Mangini notes that Coles Liquor has a cultural awareness training program, prepared by Dr Maggie Brady of the Australian National University, for store team members designed to better educate staff about the alcohol-related harm being experienced by Indigenous communities and to develop skills to facilitate better engagement with Indigenous communities. She states further that it is the policy of Coles Liquor to notify the Police where staff become aware of persons consuming liquor in a public place and that liquor is not sold to persons who are reasonably believed to be likely to consume liquor in a public place.
123. Ms Mangini states that each store maintains an incident register which records any incidents that occur in the store, such as any refusals of service or aggressive or disorderly patrons. Coles Liquor regularly supplies staff with an interactive checklist designed to enable team members to appropriately apply RSA standards.

Harm minimisation measures directed towards youth:

124. Ms Mangini states that Coles Liquor does not expect the opening of the Vintage Cellars Oasis store will increase or contribute to the amount of underage consumption of liquor and refers to the strict enforcement of its RSA policy which prohibits the sale of liquor to any person who cannot prove they are above 18 years of age. Normal practice is to require anyone who appears to be 25 years or younger to be asked for proof of age. Coles also has a 'school uniform' policy, which states, unequivocally, that staff must not serve anyone in school uniform under any circumstances even when a valid ID is produced.

Advertising policies:

125. Ms Mangini advises that Coles Liquor's primary method of advertising is in catalogues and newspapers and a copy of Coles Liquor's 'Responsible promotion and advertising of liquor guidelines' is annexed to her statement. As general principles, Coles Liquor seeks to ensure that its liquor advertising:
- Should not encourage the rapid and/or excessive consumption of alcohol;
  - Should not appeal to minors or people under the age of 25; and

- Should not promote inappropriate or offensive behaviour.
126. Ms Mangini states that as a signatory to the ABAC Coles Liquor takes its alcohol advertising obligations and responsibilities very seriously and is committed to industry best practice. The ABAC vets all major Vintage Cellars campaigns prior to their release to ensure that they meet community standards.

## FURTHER SUBMISSIONS ON BEHALF OF COUNCIL

127. On 30 November 2020 the Director invited Council to provide any submissions it may wish to in response to the further submissions of the Applicant. The Director also accepted an invitation from the Mayor for a meeting to discuss the process for determination of the application under the provisions of new section 334 of the Act. The meeting with the Mayor and Chief Executive Officer (CEO) took place on 2 December 2020.
128. Council responded to the request for further submissions by letter from the CEO dated 4 December 2020 and advised that Council's original position, objecting to the proposal, remains unchanged and attached the original letter of objection lodged with the Commission.
129. Council referred to the Riley Review and the recommendation that the *Liquor Act 1978* be re-written to provide a coherent framework for the operation of the liquor industry within harm minimisation principles and in particular the primary purpose of the Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion, and consumption of liquor.
130. Council also noted the recommendation of Riley Review that an immediate moratorium be imposed on the granting of any new takeaway liquor licenses on the basis such licences had reached saturation point. Council noted that a review was to be undertaken after the first five years of the moratorium when consideration may be given to extending the moratorium. He submitted that the substitution application was seeking the relocation of a liquor licence from Darwin to Palmerston which would result in an additional licence within the City of Palmerston, contrary to the recommendation of the Riley Review.
131. The Council noted that under its recent submissions the Applicant proposed that the store would be branded Vintage Cellars and not Liquorland, presumably influenced by a single statement in the Commission's original finding that a Vintage Cellars might have provided additional choice of products. The Council stated that Council not only rejects this assertion but also contends that the Commission erred in this opinion for the following reasons:
- Takeaway liquor licences are not differentiated by their branding. All takeaway liquor licences have the same rights and privileges, despite current branding or indeed rebranding in the future and considers that the doctrine of "substance over form" applies in this case.
  - It is unclear how the Commission determined that a Vintage Cellars is fundamentally different from Liquorland. At its core, both are takeaway liquor facilities. Council recognises that Vintage Cellars' website offers a small range of alternative products to its sister-brand Liquorland. However, the bulk of offerings are overwhelmingly the same between the two brands.
  - The licence does not mandate or dictate the range of products that are made available between any brands of liquor store and therefore confirms the licence is fundamentally the same, regardless of the store's branding.
  - The choice of liquor products available for sale are fundamentally a business decision, established by consumer demand, not necessarily by branding of the outlet, and are subject to change to meet consumer demand, without potential rebranding of a Vintage Cellars back to the more familiar Liquorland. This fact alone renders the applicants assertion that Vintage Cellars is somehow different to a Liquorland moot.
  - Community impact remains much the same regardless of whether the outlet is branded Vintage Cellars or Liquorland. The conditions of the licence do not prevent or restrict trade

when compared to existing outlets, therefore it is unclear how the applicant can state that Vintage Cellar stores are typically "less risky" on the assumption that its usual customers are more sophisticated and mature. This cannot be substantiated when the majority of products sold are the same.

- Council queries the need for an alternate offering proposed by Vintage Cellars, compared to the standard offerings. He notes that City of Palmerston has recently seen the sale of an outlet which purported to offer a point of difference, Cellarbrations Bellamack, to the Woolworths group and the subsequent rebranding as a BWS budget liquor outlet. This particular outlet is located in Bellamack, one of Palmerston's newest and more socio-economically advantaged suburbs.
- Council notes further that a second Cellarbrations outlet within the Gateway Shopping Centre, has also closed, having been unable to compete with the standard offerings of BWS. In addition, a third Cellarbrations outlet on the city's outskirts at Pinelands has been sold and rebranded to Liquorland, again demonstrating there is not strong demand for a different offering.
- Council submits further that there is nothing preventing Vintage Cellars from rebranding in the future or only stocking the same range that consumers demand at other outlets and that the Vintage Cellars brand does not represent a completely new offer and cannot be significantly differentiated from all other retail outlets in Palmerston. Further, the majority of products sold in takeaway outlets are the same with the result the community impact is the same.
- In respect of the Applicant's reference to Council's Municipal Plan for 2020/2021, the CEO states that Council's Community Plan refers to businesses and the economy generally, not specifically takeaway outlets. He states further that the Community Plan should be read in its entirety given it also states "Palmerston is a safe and family friendly community where everyone belongs" and includes a measure of success, being reduced crime rates and specifically a reduction in alcohol-fuelled violence.

132. The submission from Council concludes by stating that it retains its original objection to the granting of a substitute takeaway licence in its original submission and supported further by the information within its further submissions of 4 December 2020.

## **FURTHER SUBMISSIONS ON BEHALF OF NT POLICE**

133. NT Police was provided with the opportunity to make further submissions and invited to provide any further materials it wished to be taken into account for the purpose of the determination of the application by the Director. By letter dated 8 December 2020 NT Police advised they continue to rely on the evidence and submissions made before the Commission by Superintendent Deutrom and note that his evidence articulated evidence-based public safety concerns relating to alcohol-fuelled violence and anti-social behaviour in the City of Palmerston.

134. Police provided the following further comments and submissions to support the concerns raised previously before the Commission:

- Police note that the Applicant has chosen to re-brand the proposed store to the "Vintage Cellars" brand;
- The Applicant states that Vintage Cellars caters to the boutique beer, fine wine and spirit market which results in increased product range over Liquorland of on average 7% nationally and 15% in the Northern Territory. Police do not dispute that claim however it is noted from the statement of Ms Mangini that "each store has a curated range designed to cater to local customers". Police noted further that the prices of several of these products were equivalent or cheaper than Liquorland, dependent on weekly specials;
- Police also raise a further concern relating to the loyalty program offered by Vintage Cellars where membership allows customers to earn points for each dollar spent that can

be redeemed for selected products or used to obtain a discount. Police submit this program may be appealing to the vulnerable persons who reside in the Palmerston region and are generally financially disadvantaged.

- The Police submissions also refer to a separate application currently before the Director for the substitution of a “premium boutique” type liquor outlet in the Palmerston area. Police submit that there is already an oversupply of liquor outlets in the Palmerston area and it may not sustain an increasing number of premium boutique liquor outlets.
- Police note from the Applicant’s further submissions that the majority of business operating at Oasis support the Vintage Cellars proposal on the basis of the potential increase in customers attending their businesses. Police note however that there is no evidence or reference to further engagement with residents in the vicinity of Oasis Shopping Centre. Police note that store owners may have a pecuniary interest in the proposal with regards to their own business however the feedback of those that reside in the vicinity of the Oasis Shopping Centre would have been valuable to assess the application.

135. In conclusion, Police state they remain opposed to the approval of a liquor licence at the Oasis. Police submit that the re-branding from one trademark of Coles Liquor to another, and despite the support of store owners, will not mitigate the harm caused to the Palmerston community by alcohol fuel anti-social behaviour and violence.

## CONSIDERATIONS

136. In considering the revised application the Director, like the Commission, is obliged to consider the purposes prescribed in Part 1, Section 3 of the Act, namely:

(1) The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.

(2) The secondary purposes of this Act are:

- (a) to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor;
- (b) to regulate the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory;
- (c) to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and
- (d) to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.

137. In its Decision Notice, the Commission refused to approve the substitution of the Berrimah Supermarket liquor licence to the Oasis site proposed by the Applicant. It is apparent from the Decision Notice that the primary concern of the Commission was prospect of an increase in alcohol-related anti-social behaviour in the vicinity of Oasis. Clearly, the Commission placed significant weight on the evidence from Police to the effect anti-social behaviour had decreased significantly in and around Oasis since the closure of the BWS liquor store. That fact is acknowledged in the further submissions provided by both objectors and the Applicant itself.

138. In reaching its decision the Commission made the following observations that are particularly relevant to the considerations in respect of the Applicant's revised application:

149. *If this was an application associated with a proposal to establish a new Coles Supermarket in a new suburban development then we would accept that despite section 50(3) there would be obvious consumer benefits in having a one stop shopping experience close to home. However,*

*there already is a Coles/Liquorland option for consumers within 237 metres of the Oasis store. There is no compelling evidence before us to suggest that consumers who want to do their shopping at the one location cannot achieve this by attending the Palmerston Shopping Centre Coles/Liquorland store. If they are not happy with Coles then they can attend either of the Woolworths/BWS stores at Gateway or Bakewell. In the objections lodged by both Police and the Palmerston Council, they each point out that there has been positive community feedback about having the option of shopping for groceries at a complex that does not have a liquor outlet. If the Applicant wanted to dispute that evidence, it could have conducted an objective market survey to gauge the views of its customers on this issue. We have also taken into account that there will be no additional choice of products for consumers as for example, might have been the case if Coles had decided to open one of its Vintage Cellars outlets at this location. On the evidence before us, we are not persuaded that there are any real benefits for consumers in having another Liquorland so close to the other outlet. (Emphasis added).*

139. The above statements would have, in my opinion, at least raised a reasonable expectation on part of the Applicant that, were it to address the issues of customer support and the type of offering proposed there was at least the prospect that the Commission would approve a revised application addressing the issues raised in paragraph 149 of the Decision Notice.
140. Following the refusal of the application the Applicant exercised its right to seek a review of the Commission's decision by NTCAT. It would have been equally open to the Applicant to present a fresh application to the Commission addressing the issues of customer support and the nature and branding of the proposed new liquor outlet.
141. However, even had the applicant addressed the concerns raised by the Commission in paragraph 149 it is apparent that Council would have again lodged an objection. This is apparent from the fact that both Council and Police have indicated in their further submissions that they remain opposed to the location of any liquor outlet at Oasis, including a Vintage Cellars branded outlet, due to concerns regarding the return of alcohol-based anti-social behaviour in and around Oasis.
142. The recent amendments to the 2019 Act are specific and clearly provide for the submission of further information from the Applicant in support of its substitution proposal with the aim of expediting the consideration of any revised application. The Applicant has taken the opportunity provided to it by section 334 of the 2019 Act and sought that the Director determine the application in an expedited manner.
143. It is of significance that the Commission, having carefully and exhaustively considered the public interest and community impact test, stated that if the application for substitution of the liquor licence were approved that it would not lead to any increase in the sale of alcohol in the Palmerston locality. It must follow that the Liquor Commission accepted that the grant of the licence would not lead to an increase in alcohol-related harm in the locality.
144. Rather the Liquor Commission refused the application because it balanced the concerns stated by Council and Police that the store, which was originally proposed a Liquorland outlet, may result in the migration of anti-social behaviour from elsewhere in the locality to Oasis against what it regarded as the lack of community benefit or public desire for a further Liquorland store trading in relatively near proximity to an existing Liquorland store in another Palmerston shopping centre.

### **Market Research Study – Oasis Shopping Village**

145. As noted above, the Commission considered the evidence of Police and Council in respect of the positive community feedback regarding the option of shopping for groceries at a complex that does not have a liquor outlet. Of significance, the Commission stated that if the Applicant wanted to dispute that evidence, it could have conducted an objective market survey to gauge

the views of its customers on this issue<sup>25</sup>. The Applicant subsequently conducted a market survey as suggested by the Commission.

146. For the purpose of its revised application to be determined by the Director, the Applicant commissioned Kookaburra Consulting, an independent research service based in Darwin, to undertake a market research study on its behalf in relation to application to substitute a Vintage Cellars liquor outlet into Oasis. Kookaburra Consulting conducted a customer survey in the Oasis Shopping Village, Palmerston, to capture their attitude toward the current application for a liquor retail outlet to be opened in the shopping centre adjacent to the Coles Supermarket.
147. For the purpose of the customer survey, interviewers intercepted customers exiting the supermarket and asked 4 questions related to the application for the proposed Vintage Cellars store. A total of 431 surveys were completed across the 24 and 25 November 2020. Respondents were asked four questions:
- How frequently they purchased liquor from a liquor retailer;
  - If they were familiar with the Vintage Cellars liquor stores;
  - If they would support the current application for the proposed liquor retail outlet; and
  - If they thought the inclusion of the liquor retail store would provide shoppers convenience in having grocery and liquor products in the one location.
148. In its report Kookaburra Consulting advised of the following result from the customer survey:
- Just over 34% of respondents (146) indicated that they did not purchase liquor from liquor retailers while just over 65% of respondents (283) indicated that they purchased liquor either sometimes or often.
  - Well over half of all respondents, 63.34% (273) knew of the Vintage Cellars retail stores. Some respondents were aware of there being a Vintage Cellars store located in Darwin City and commented that it would be good to have one in Palmerston thus relieving the need to travel into the city to access their product lines.
  - Just under three quarters of respondents, 74.77% (320), indicated that they would support the application to open a Vintage Cellars liquor retail store in the shopping centre. 25.23% (108) respondents did not support the application while 3 respondents chose not to comment on the question.
  - The majority of respondents, 79.25% (340), felt that it would be convenient to be able to do both their grocery and liquor shopping in the one location. Only 20.75% (89) of the respondents did not feel there would be any convenience in the liquor store being in the centre. Of the 431 survey respondents, 3 chose not to respond to the question.
149. In terms of the demographics of customers surveyed the report compiled by Kookaburra Consulting indicated that respondents were predominantly female with 59.09% (247). 40.91% (171) of respondents were male and 13 respondents chose not to answer this question.
150. Customers who were under 18 years of age were not included in the survey sample. Just over 13% (54) of respondents were in the age bracket of 18 to 24 years, 178 (41%) were between 25 and 44 years of age with (45%) 124 respondents aged above 45 years. Two respondents did not disclose their age.
151. In terms of ethnicity, just over 15% (71) of respondents identified as Aboriginal or Torres Strait Islander (ATSI), with a little more than 5% (24) identifying as other nationalities. The majority of respondents, just under 75% (323) did not identify as ATSI or another nationality. Only 13 respondents preferred not to respond to the question.
152. The fact that just under three quarters of respondents indicated that they would support the application to open a Vintage Cellars liquor retail store in the shopping centre as opposed to 25.23% of respondents opposed, provides compelling evidence that there is customer support

<sup>25</sup> Ibid at paragraph 149

for a liquor outlet at Oasis. The fact that all respondents were actually at Oasis when the survey was conducted makes that evidence even more compelling.

### **Community Impact:**

153. The Commission is required by the Act to consider the community impact of all liquor licence applications referred to it against the primary purpose of this Act to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor. The public's interest in the establishment of a Vintage Cellars outlet at Oasis is clearly demonstrated by the customer survey.
154. In its response to the further submissions of the Applicant, Police note there is no evidence of further engagement with residents in the vicinity of Oasis Shopping Centre. Whilst the survey did not ask respondents where they lived it is reasonable to assume that at least some of the persons who attended Oasis on the days the survey were conducted reside in proximity to Oasis.
155. In terms of the proposed Vintage Cellars outlet leading to the potential for increased harm in the locality of Oasis it is of significance that not one member of the public objected to the substitution of premises for the establishment of a Liquorland outlet at Oasis. That is completely at odds with the objections lodged previously for applications for takeaway liquor licences in the City of Palmerston.
156. The Commission accepted the Applicant's submissions that a bottleshop had been operating from the same location for 20 years without any significant impact on the types of facilities listed in the guidelines. Of significance, the Commission also took account of the fact there have been no objections lodged by any of those facilities or members of the public<sup>26</sup>. The fact that no members of the public objected to the prospect of a takeaway liquor outlet opening in Palmerston is something of an anomaly.
157. In a recent application referred to the Commission in respect of a proposal to substitute a liquor licence from the Gateway Shopping Centre to Durack, 22 objections were received from members of the public. In 2015, prior to the moratorium, an application was lodged for a takeaway liquor licence for the Roseberry IGA store. That application attracted 22 objections, 20 of which were from members of the public.
158. No objections at all were received in respect of the application by Woolworths to open a BWS outlet in the Gateway Shopping Centre and no members of the public objected to the Liquorland Oasis application. As set out above, 75% of the Oasis customers who responded to the survey commissioned by the Applicant stated they were in support of the opening of a Vintage Cellars at Oasis.
159. The reasons for the lack of public objections in the BWS Gateway and the Oasis application is most likely due to the public perception of the reputation of Coles Liquor and Woolworths as responsible and reputable licensees. It is also, in my view, a reflection of the fact that the public generally expects there to be supermarkets operated by the major chains in shopping centres and, in the majority of cases, the public expects there to be a bottleshop associated with those supermarkets for the convenience of being able to purchase their groceries and liquor supplies in the one shopping trip.

### **Economic Benefit:**

#### Letters of support from tenants of Oasis:

160. As noted above in the summary of the Applicant's further submissions, consultation was undertaken with other tenants of Oasis in regard to their views on the opening of a Vintage Cellars outlet in the shopping centre. In total the Applicant has provided written

<sup>26</sup> Ibid at paragraph 138

correspondence received from 22 tenants. Below is a table summarising the responses from those tenants.

	Business Type	Summary of comments
1.	Cafe	I fully support the possibility of Vintage cellars becoming a tenant of the centre. We believe there will be an increase of foot traffic to the shopping centre which is beneficial for all tenants and will help us to capture more sales. In regards to anti-social behaviour, we believe with the correct systems in place and improved security, there should be minimal to zero instances of anti-social behaviour.
2.	Medical Clinic	<p>We as a business are very supportive of having a liquor store in the Oasis shopping complex. Our main reason being that it will increase the foot traffic throughout the centre which of course will greatly benefit all the small businesses.</p> <p>We have always had a liquor outlet in our centre without any negative anti-social behaviour concerns, but when Woolworths left so did the liquor outlet, therefor I cannot foresee any problems arising,</p> <p>I believe that a Vintage Cellars outlet will increase the amenities of Oasis Shopping Village.</p>
3	Cafe	<p>This is a very exciting welcome bringing in more shoppers to Oasis Shopping Centre and we are delighted.</p> <p>We have traded in this centre for about 24 years and believe, we need to expand our small community making it vibrant and improve business. Vintage Cellars is a famous brand throughout Australia and will be recognised, bringing in more shoppers.</p> <p>Alcohol or no alcohol, do not make any difference to society. It is education through schools, training and good social management getting people away from situations when they need to numb their brains to get away from their anxieties and problem, In such situation, unless you ban alcohol which mankind enjoy and accustomed to for thousands of generations, they still can get their alcohol, This is not fair to society to suffer just for the very minority. For our business to prosper and the NT to have a good economy, we need to have a happy vibrant society, not let a few bad cookies spoil us.</p> <p>We want to keep working and improve our business, same as the wider community of NT, and we support Coles in their application for a liquor license to sell Vintage Cellars brand of liquor.</p>
4.	Restaurant Takeaway food	<p>In my opinion, having a liquor store in Oasis is a good investment. Because this will bring more convenience and flexibility to customers shopping experience at Oasis. Therefore, businesses will have more opportunity to attract new potential customers due to increased traffic.</p> <p>However, part of this investment should be considered to safeguard so that the centre can prevent misbehaviour situation and support staff.</p>
5.	Tobacco shop	Supportive of the Liquor license application by Oasis Shopping Centre.

		<p>We believe the licensee's positive result in the application will increase foot traffic to the centre benefitting all stakeholders within the centre.</p> <p>The brand is well known and respected and we don't foresee any negative's arising from granting them their application.</p>
6.	Pharmacy	<p>As a pharmacy that promotes health and well-being we do not wish to provide a letter of support to the proposed application noting that we do offer services for a number customers that do suffer from alcohol dependence.</p> <p>As a business operating in the centre I do not have any specific issues with the prospect of a bottle shop operating in the centre and confident that centre management can manage any antisocial behaviour that could be associated with it.</p>
7.	Fast Food	<p>I have been operating here since May 2019.</p> <p>I'm happy to provide a statement regarding the possibility of a liquor outlet at Oasis Shopping Village, something I am supportive of and that I really hope goes ahead.</p> <p>The main benefit I see of having a bottle shop here is more traffic. People, customers ask why we don't have one. They love coming here but hate that they have to make an extra stop. They are buying alcohol anyway. Every single shopping centre In Darwin has a bottle shop, why not here?</p> <p>Having a bottle shop may bring some issues, but saying that, I know there was one here before, and didn't see any problems here that were worse than anywhere else, and having a big brand like Vintage Cellars will make is a better centre in my opinion, especially as it's a quality brand.</p>
8.	Mortgage Broker	<p>... we are in favour of the liquor store being in the Oasis Centre. When we made the commercial decision to have our premises in the Oasis centre it was due to full services being offered in the centre that allowed for the commercial decision to sign a lease, being the best choice for us in the Palmerston marketing territory. Foot traffic and branding are essential for business and since full offerings have not been able to be made, other shopping centres that are less convenient for the consumer to visit have seen an increase in foot traffic and seen Oasis become a shell of its former ability to offer supports to the community around it.</p> <p>When we then came to open and the new Coles was opened and the liquor licence not approved, this impacted the outcome and viability of our business decision. Up until this point, the centre had been exceptionally busy on most days. With the full grocery shopping experience not being available in this location we have seen foot traffic decrease to hardly anything and other shops in the centre struggle financially. The benefits have then been provided to the larger, more corporately functioning shopping centres as opposed the smaller locally owned ones which is a common thread and practice of the NT Government.</p> <p>A lot of businesses in the last few years have taken the risk to be self-employed based on the offerings of the centre at the time leases were signed, and have since had to struggle for foot traffic which has then</p>

		<p>added additional cost to running the businesses with still lower outcomes than previously experienced, all due to the lack of convenience of having to go to different locations for different goods and services, instead of a more convenient one stop visit.</p> <p>A Vintage Cellars here or in any other location would not bring with it any extra issue that isn't already in the community. Given the branding of this particular outlet, it does not give rise to the cheaper, alcohol sales anyway, but rather premium product that would see the astute consumer looking to purchase for something specific of a particular quality. As such cannot see any sort of anti-social behaviour being promoted in this way due to price point and product offering of such a brand.</p> <p>The implementation of such a branch will be in line with the higher end services offered throughout our small shopping centre which naturally by its presentation and quality encourages visitors to come here rather than elsewhere and the higher end branch such as Vintage Cellars can only do the same as well as increase the exposure of the centre and assist local small business and growing which can only then offer more employment opportunity in the local area as a result.</p>
9.	Small Business Support	<p>I am a new tenant to the centre, and have been operating my store, ... .., here at Oasis since the beginning of October.</p> <p>I'm writing this statement to show my support of having a liquor store at Oasis Shopping Village, especially a brand like Vintage Cellars which is well known as being a more up market store, which would deter any negative issues or antisocial behaviour. This is especially the case while Liquorland is still across the road.</p> <p>Adding a national brand to Oasis will also attract more customers to Oasis. The centre lacks in national brands, and a quality one like this would be great because it would bring in traffic from a higher socio-economic status, which benefits retailers.</p>
10.	Fresh food	<p>I am the owner operator of the ... store at Oasis Shopping Village, and was also in this position when Woolworths were here and BWS was the liquor outlet.</p> <p>I am very supportive of there being a liquor outlet again at Oasis, and I don't think it will have a negative effect. The government has put other things in place like the floor price, and people who want to cause trouble will cause it anyway. There was never a problem before either because security controlled it well,</p> <p>Having a liquor store at Oasis will be much better for business. More traffic is a priority, and it's also more convenient for the customer. All other centres have a liquor store so it's not fair that we don't have one here. I have customers say to me that they come and get food from me maybe once a week, but if they could get everything they needed they would come much more often. They say this to me.</p> <p>If this is approved I would really appreciate it. It's a win/win situation. It's good for business, and it's also good for the customers.</p>
11.	Butcher	I own and operate ... Butcher at Oasis Shopping Village.

		I respectfully decline from giving a statement supporting Vintage Cellars application for Oasis Shopping Village due to my religious beliefs.
12.	Fitness Centre	<p>As owners of ... .. at Oasis Shopping Village we have a vested interest In this liquor license being approved. We are the second largest tenant at the centre, with Coles being the largest, and like all retailers within the centre, we rely heavily on foot traffic to raise our brand awareness.</p> <p>At the time we signed our lease at Oasis, the centre was trading with Woolworths as their anchor tenant, with a BWS attached. We don't recall there being any major issues with anti-social behaviour, and there were certainly less issues at Oasis than there were at other centres In Darwin and Palmerston. When Coles opened, they opened without a bottle shop and the centre and everyone in it has been at a disadvantage ever since due to the drop In foot traffic.</p> <p>Having a large national brand such as Vintage Cellars open at the centre, would only Improve the quality of the centre. The Vintage Cellars in Darwin attracts a much different customer to the Liquorland and BWS, and we expect that would be the same at Oasis Shopping Village. We also expert that they would have security in place, which when combined with the centre provided security, would act as a deterrent to any anti-social behaviour.</p> <p>As It stands. Oasis Shopping Village is the only shopping centre In Darwin which has a supermarket trading without a liquor license. This is unfair for tenants, and Inconvenient for customers.</p>
13.	IT/Phone Repairs	<p>We believe that it would be positive aspect for many business such as ours due to the increase of foot traffic, if there is a liquor store in the future. As long there is control of the anti-social behaviour by performing the correct procedures and correct allocation of the public that will come through due to the business opening up there shouldn't be any problem.</p> <p>The benefit of having the business in oasis is that there will be foot traffic due to people being able to shop at Coles and go right next door to the liquor store instead of driving to a particular place. As well as neighbourhood near Oasis Shopping Village will feel more convenient.</p>
14.	Pizza Shop	<p><i>Are you supportive of having a liquor store in Oasis?</i></p> <p>Yes it will be a good idea to have a liquor store as almost every shopping centre has one. and eventually increase foot traffic in centre</p> <p><i>What you perceive is the benefit of having Vintage Cellars in Oasis?</i></p> <p>Foot traffic meaning more visitors to Oasis, well-known brand, more business for them because of increased foot traffic, etc.; Vintage Cellars will be a much better option because of premium brand status and nearest one is in Darwin City so it will attract more people towards oasis and less chances of anti-social behaviour.</p> <p><i>Your thoughts in relation to whether having Vintage Cellars in Oasis will give rise to any negative issues such as antisocial behaviour at Oasis;</i></p> <p>Can't see any issue with vintage cellars will create any negative issues being premium wine retailer their majority of customers coming from middle to upper class level.</p>

		<p><i>Anything you can say about how an additional national brand coming to Oasis will increase the amenity of Oasis.</i></p> <p>Simply more national brand will attract more customers and more choices for customers who are going other centres for shopping.</p>
15.	Coffee Shop	<p>I whole heartedly support the opening of a Vintage Cellars in Oasis shopping centre.</p> <p>[The business] never had any crime related issues whilst the previous bottle shop was open and I don't expect any with a new one being open.</p> <p>We have however had a significant loss of sales since the closure of the bottle shop. So much so that we had to put our Franchise up for sale.</p> <p>The reopening of the bottle shop especially a high end brand like Vintage Cellars will certainly create a buzz in the local community and help create a lot more foot traffic in the centre.</p> <p>Which in turn will help us regain some of our lost sales allowing us to employ more people from the local community.</p> <p>We currently employ about half the amount of staff we had before the BWS closed and this was the case before Covid 19 happened.</p> <p>This a far bigger issue than some perceived unruly behaviour.</p> <p>This affects people's jobs and businesses.</p>
16.	Restaurant	<p>In relation to the proposed liquor license review for Oasis S/C in Palmerston, ... .. at a high level is willing to support this case.</p> <p>Overall I believe the additional of a liquor outlet being Vintage Cellars or other would see an increase of foot traffic to the centre which will hopefully benefit other retails including ourselves. Additional national brands do drive foot traffic and help in creating a destination location for locals which is to the benefit of all.</p> <p>With respect to the above, our support to this would be conditional upon Oasis S/C putting in the appropriate measures to protect against antisocial behaviour, and ensure staff safety. We are of the view that the addition of a liquor outlet whilst beneficial will bring an increased likelihood of anti-social behaviour. As an employer with many younger staff of which a large proportion are also female, the safety of our team is of utmost importance. As our business trades later into the night than many other tenants our staff are leaving later than most. We would want to know that security staff are available to our team to assist should any issues arise, or be present to ensure our staff can leave safely.</p> <p>If security to the centre and our staff can be provided than the application has the full support of [The Business].</p>
17.	Psychologist	<p>... .. is a business that works with and supports people experiencing a range of issues, some of which include mental health. Therefore, we are unable to provide a statement of support for the above application.</p> <p>However, as a business operating in the centre, we take a neutral stance that is neither for nor against a take away bottle shop trading inside the centre.</p>

18.	Barber	<p>As a small business owner in the Oasis Shopping Village, I write in support and favour of having a liquor store within the mall.</p> <p>Key benefits not only for myself, but other small businesses will include increased foot traffic, potentially increase in sales, which in turn will generate more business and especially more visitors to the centre.</p> <p>Oasis is growing and to have an additional national brand on board will definitely increase the amenities of Oasis.</p> <p>Please accept this letter as support in having a liquor store in Oasis Shopping Village.</p>
19.	Manicurist	<p>I operate ... .. in Oasis Shopping village. I am writing this letter to show my support for Oasis having a liquor store. Having a liquor store would greatly increase the foot traffic through the centre which will be very financially beneficial for my business, especially during this difficult time. Having lived and run my family businesses in Palmerston for 10 years, I take anti-social behaviours in Palmerston very seriously. I do not believe having a liquor store in Oasis Village would have a negative effect on the situation. Supporting local businesses and creating more jobs might even help to decrease the number of anti-social behaviour incidents.</p>
20.	Podiatrist	<p>I have taken the opportunity to talk with the team, the only concern that was raised was around the security of the team and the store. Providing adequate messages are put in place to ensure the safety of the team, our patients/customers and the store I have no objection.</p>
21.	Electrical Appliances	<p>... .. I am a small business owner and have been in the Oasis Shopping Village for over ten years and in that time I have never seen problems with the bottle shop, I don't believe that we had social problems when we had the bottle shop with Woolworths. I can tell you first hand that not having no bottle shop in the centre has affected my business to a point where my figures has dropped at least 30 to 40 percent. I believe the crime in Palmerston would not increase in Palmerston if we had a bottle shop in the Oasis as our security staff in the centre are more than capable at their job. Having two Coles super markets across the road from each other and only one having a bottle is only going to make it harder for the small business owners in the Oasis shopping Village to make a living and support the people of Palmerston. We have not had a bottle shop for about 3 to 4 years and crime has only risen in Palmerston, so I believe having a bottle shop in the Oasis Shopping Village will only help all the small businesses in the centre with increase traffic flow.</p>
22.	Massage Centre	<p><i>Are you supportive of having a liquor store in Oasis?</i></p> <p>Yes</p> <p><i>What you perceive is the benefit of having Vintage Cellars in Oasis - foot traffic meaning more visitors to Oasis, well-known brand, more business for them because of increased foot traffic, etc.;</i></p> <p>More visitors mean good for my business. When there are more shops in at Oasis Shopping Village, customers will choose to come here to do their shopping. My business will get more customers when they come here to buy groceries, food, glasses, drinks and get a massage.</p>

		<p><i>Your thoughts in relation to whether having Vintage Cellars in Oasis will give rise to any negative issues such as anti-social behaviour at Oasis;</i></p> <p>Very good. Vintage Cellars sells good quality and more expensive wine. More quality customers will visit Oasis Shopping Village and quality customers are good for my business.</p> <p>I think less social problems compare to other bottle shops, because the products are more expensive.</p> <p>Anything you can say about how an additional national brand coming to Oasis will increase the amenity of Oasis.</p> <p>Very helpful. National brands are very good at branding and it makes the centre more quality looking.</p>
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161. The responses provided by the tenants again indicates overwhelming support for the establishment of a Vintage Cellars at Oasis. In its response to the revised proposal Council maintained its objection on the basis Oasis includes a number of facilities, that attract youth and families to this shopping centre, including a pharmacy, gymnasium, takeaway outlets and cafés.
162. It is significant in terms of consideration of the application that those premises themselves do not share Council's concerns. Whilst the pharmacy does not support the proposal it does not raise any specific issues with the prospect of a bottle shop operating at Oasis and is confident that centre management can manage any antisocial behaviour that could be associated with it. The gymnasium, cafes and takeaway food shops are unequivocal in their support for a Vintage Cellars outlet at Oasis.
163. The common thread in the support shown for the proposed Vintage Cellars outlet is the prospect of more customers attending Oasis for their liquor purchases leading to greater exposure for the other businesses operating at the shopping centre. An increase in the turnover and profit of those businesses is clearly in the interests of the businesses themselves and for the community generally. That is more so at present following the general downturn in the economy due to the COVID-19 pandemic.
164. In any event, the Commission accepted the Applicant's submissions that a bottleshop had been operating from the same location for 20 years without any significant impact on the sensitive locations or businesses. Of significance, the Commission also took account of the fact that there have been no objections lodged by any of the current tenants of Oasis, nor had any members of the public objected.
165. Despite the fact only a small number of letters of support from Oasis tenants were presented to the Commission for the purpose of its hearing, the Commission accepted that granting the application would result in some increase in traffic at Oasis which may provide flow-on benefits to the other traders.
166. The Commission in its decision was not satisfied that the addition of a Liquorland outlet would result in any significant level of additional employment over and above the two full time employees. Whilst not quantifiable at this stage, the clear support from the Oasis business owners is based on the assumption their businesses will grow and potentially require additional staff. The potential for the business to increase their turnover will inevitably lead to increased business for their suppliers.
167. In its submissions Police note that store owners who support the Vintage Cellars proposal are likely to have a pecuniary interest with regards to their own business. That is completely understandable given the purpose of all commercial businesses to be as profitable as possible. It must be noted that a number of the current tenants operated at Oasis when the BWS liquor

outlet was operating and Oasis was a “hot spot” for anti-social behaviour, according to Police. Despite that fact those tenants unequivocally support the Vintage Cellars proposal.

### **Submissions on behalf of Oasis Management and Service Providers:**

Mr Rod Morris, Director, Super Highways Express Pty Ltd, the proprietor of Oasis:

168. In his statement in support of the Coles / Vintage Cellars liquor licence application Mr Rod Morris states that NT residents expect that all shopping centres in the NT have the availability and convenience of a liquor outlet adjacent to a supermarket as was enjoyed by Oasis during the 20 year tenure of Woolworths. He states that increased foot traffic into Oasis significantly benefits the sustainability of all the Oasis tenants.
169. In terms of customer safety Mr Morris states that Oasis has strict security, dress standards and behavioural controls in place, enforced by the security guards on duty every hour that the premises are open. He notes that the security guards are directly employed by Oasis and are not outside contractors with the result they have a vested interest in the safety and security of customers. There are no liquor outlets within Oasis that serve alcohol for on-premises consumption.
170. Mr Morris does not believe a premium liquor outlet such as Vintage Cellars will lead to increased anti-social behaviour within the centre, and in any event there are necessary measures in place already to combat this should it occur.
171. Mr Morris states the addition of four new shopping centres in the Palmerston area has created a very competitive shopping market environment and put the Oasis at a drastic and distinct disadvantage as, without a liquor outlet, it cannot offer customers the benefit and convenience of purchasing grocers and liquor supplies in one trip. In Mr Morris' opinion a liquor licence is vital at Oasis so that all tenants can compete on a level playing field with every other shopping centre in the NT and Palmerston City area that have a liquor outlet. He states that the additional foot traffic will benefit the current tenants and also attract new tenants to make Oasis a strong competitor in the Palmerston shopping market and that he fully supports the application for a Vintage Cellars Brand Liquor outlet at Oasis.

Ms Melinda Handford, General Manager for the RR Morriss Group, Oasis Shopping Centre Managers:

172. By letter dated 23 November 2020 Ms Melinda Handford provided a letter of support to the Applicant. The RR Morriss Group purchased Oasis in April 2013 and since that time have spent over \$10 million on an expansion and full refurbishment of the centre. The RR Morriss Group is a family business and Oasis is their major asset.
173. Ms Handford's comments are summarised as follows. She acknowledges the issue with alcohol in the NT and is supportive of any measures put in place that will address this issue. She notes that Oasis employs its own security guards to ensure a high level of, and consistent approach to, customer safety at all times. Oasis also employs static guards to patrol the outside of the centre on certain nights during the week. Ms Handford is not concerned the granting of a licence to Vintage Cellars will cause an increase in anti-social behaviour as security needs will continue to be monitored and met.
174. To Ms Handford's knowledge, Oasis is the only shopping centre in the greater Darwin area that does not offer shoppers the convenience of purchasing alcohol at the same time as they purchase groceries. She states this does not stop customers from buying alcohol, in many cases it is stopping them from being customers of Oasis. In the Palmerston area, customers are spoiled for choice with four new centres opening in just over 2 years. They shop where the convenience is.
175. Ms Handford states that Oasis has always promoted itself as being a one-stop convenience centre which is not currently the case. The impact of Oasis not having a liquor outlet has resulted in a drop in foot traffic into the centre which impacts tenants, many of whom are small

Mum and Dad businesses. This then impacts the landlord, both in terms of retaining and working with current tenants and attracting new tenants.

176. Ms Handford states that the addition of a well-respected premium brand like Vintage Cellars would be a welcome addition to Oasis and the Palmerston area in general. In her opinion a Vintage Cellars outlet would provide an additional choice to residents who currently travel to the Darwin outlet. In Ms Handford's view the Vintage Cellars brand is aimed at discerning drinkers and will be unlikely to attract antisocial behaviour, but very likely to increase foot traffic and benefit Oasis customers and tenants alike and she fully supports Coles Vintage Cellars' liquor licence application.

Helen Wilson, Centre Manager, Oasis Shopping Village:

177. Ms Helen Wilson has been Centre Manager at Oasis since July 2013, around the same time as the shopping centre was purchased by the RR Morriss Group from AMP. She has lived and worked in the Darwin and Palmerston region for 20 years, in the retail industry from store management, to retail recruitment, and now Shopping Centre operations.
178. Ms Wilson states that during this time she has been across many different changes in the shopping centre, from a major redevelopment in 2014, the opening of newer shopping centres in Palmerston and the changeover of the major tenant from Woolworths to Coles. Prior to Woolworths' departure there had been a bottle shop operating at Oasis for 20 years with no more anti-social behaviour than would generally be seen in shopping centres across the Darwin and Palmerston region.
179. Ms Wilson states that during her time at Oasis they have employed security guards who are employees of Oasis. She states that the security guards take their roles very seriously and recognise troublemakers and that trespass notices are issued when required. In Ms Wilson's opinion there has been no change in the levels of crime and anti-social behaviour within Oasis prior to BWS vacating the centre.
180. Ms Wilson believes the addition of a Vintage Cellars would lend itself to a different type of shopper with a different offering that may not appeal to problem drinkers. She states that the lack of a bottleshop makes it impossible for everyone's requirements to be met under one roof and that responsible customers are disadvantaged by not having a bottle shop attached to the supermarket. This leads directly to less foot traffic and less sales and profits for the smaller operators. In Ms Wilson's view it seems very unfair that Oasis tenants are not allowed a level playing field in which to conduct their business.

Ms Chewyee Tan, Leasing & Marketing Manager, Oasis Shopping Village:

181. Ms Tan states that she has more than 20 years' experience in retail development consultancy, centre management and marketing communications and understands the importance of having a complete tenancy mix for a retail centre to create a sustainable and competitive advantage. She notes that Darwin's economy has been bleak for a long time and that a boutique retail centre like Oasis has been struggling to attract foot traffic since the closure of the BWS outlet.
182. She states that without a liquor licence attached, Coles' foot traffic and turnover have dropped to an unbearable level resulting in some retailers selling or closing their businesses. She states that Oasis has since lost its competitiveness in attracting local and national brands and that the vacancy rate is appalling with customers choosing to go to other centres that provide one-stop grocery and alcoholic beverage shopping.
183. Ms Tan notes that Vintage Cellar is a well-established national brand that has anti-social behaviour management and security measures in place. She states that Vintage Cellars is positioned as a higher end brand in the market and being the first Vintage Cellars in Palmerston would be an asset to the centre and negate the need to travel to Darwin for a similar experience. In her opinion the addition of a Vintage Cellars outlet will help in increasing foot traffic and

brand awareness which in turn will help retailers to regain their sales and allow more employment opportunities.

184. Ms Tan does not believe the addition of Vintage Cellars at Oasis will give rise to anti-social behaviour in the vicinity as there are stringent laws in the NT regarding who can purchase alcohol and where it can be consumed. Consumption of alcohol is not permitted within the shopping centre and its carpark. She states that Oasis has an extensive operating procedure in respect of security and will continue to put significant effort into ensuring that laws and rules are obeyed. She states that the majority of retailers in boutique shopping centres rely on an anchor, a supermarket with a bottle shop, to attract foot traffic. In her view banning a liquor outlet at Oasis seems extremely unfair and will result in failed businesses, vacant shops and rise in unemployment.

Mark Granucci - Senior Security Team member Oasis Shopping Village

185. In his letter dated 23 November 2020, Mr Mark Granucci states he is very supportive of a bottle shop at Oasis. He refers to the convenience for shoppers who wish to purchase alcohol along with other shopping. Mr Granucci states he does not believe there will be a problem with anti-social behaviour because he has dealt with this before and had it under control.
186. Mr Granucci notes that Vintage Cellars is at the high end of the market and that patrons likely to engage in anti-social behaviour will go elsewhere due to the price differential. He states that as a security officer he has no problems asking people to leave and escorting them from the property. If the application is approved Mr Granucci recommends that Vintage Cellars engage their own security guards and with co-operation between both they can identify and prevent secondary supply of liquor.

Ms Carol Collins, Cleaning Supervisor, Oasis Shopping Village

187. Ms Collins has been employed on a full time basis as the cleaning supervisor at Oasis for over 10 years. She fully supports a bottle shop at Oasis as, in her view it will make the centre busier again and benefit shop owners. Ms Collins was employed at Oasis when BWS was there and the centre was busier during that time.
188. She states that when BWS was at Oasis they did not experience any more problems with people being drunk in public than anywhere else. She suggests there were in fact fewer problems than anywhere else as the security guards know the troublemakers and deny them entry to the premises. In Ms Collins' view it makes sense to have a bottle shop at Oasis again because it is the only shopping centre without one and regular customers complain that it is harder to do shopping because they can't get their food shopping and alcohol shopping in the same place. Ms Collins said it would be good to have a Vintage Cellars outlet at Oasis as currently there is not one in Palmerston at all.
189. In summary the submissions on behalf of Oasis Management and its service providers is overwhelmingly in support of a Vintage Cellars outlet at Oasis. The reason for that support is obvious and consistent with that of the operators of the businesses at Oasis.
190. In her evidence before the Commission Ms Morley, the Coles Supermarket Store Manager, stated she has seen a 40% drop from its original forecast for the supermarket and it was expected that would improve if a liquor outlet was again operating at Oasis. Coles is the anchor tenant at Oasis and it would be expected to be the greatest contributor to the rent paid to the Oasis owner. As for all shopping centres, the loss of an anchor tenant is likely to have significant detrimental impact in terms of revenue not only for the shopping centre owner but also for the smaller business who rely on foot traffic attending the anchor tenant's premises to support their own businesses.

#### **Further Economic Benefit:**

191. In considering the original application the Commission took into account the fact that existing premises at Oasis would be used for the proposed liquor store with little benefit for the

construction industry. Obviously that situation has changed with the new proposal to locate a Vintage Cellars outlet at Oasis.

192. The Applicant has stated that the Vintage Cellars proposal will involve a direct investment in the region of \$1.5 million, including \$800,000 in fit-out costs. The Applicant has also agreed to fund, \$50,000 in improvements and upgrades to the lighting and CCTV. The Applicant has confirmed that those works will be carried out by local contractors.
193. In a recent decision of the Commission in respect of a substitution of licence application the Applicant estimated that a total of approximately \$3.5 million would be spent on construction costs. The Commission noted that this is not an insignificant sum given the current financial challenges facing the Northern Territory and stated that significant factor in its consideration of the merits of the application was that the Northern Territory economy is currently in urgent need of private sector investment in the construction industry and, job creation opportunities within the hospitality industry.<sup>27</sup>
194. The same considerations apply in the case of the Vintage Cellars proposal for Oasis with the Applicant proposing to inject approximately \$1.5 million in private investment into the local economy to the benefit of local construction businesses and tradesmen. The Applicant has confirmed that the works will be carried out by local companies and tradesmen and, if the application is approved, those works will begin shortly afterwards. Given the state of the NT economy as it merges from the COVID pandemic, a private investment of \$1.5 million will result in a significant and positive impact on medium and small sized business based in Darwin who are able secure contracts for the works proposed by the Applicant.
195. Also in terms of economic benefit, as noted above, apart from the Coles Supermarket there are 22 small businesses operating at Oasis. Of those all but two support the substitution application as they expect the establishment of a Vintage Cellars outlet to increase customer attendance at Oasis and, as a consequence, enhance the viability of their respective businesses. The additional exposure for those small businesses is expected to increase their profitability as they emerge from the very tough times brought about by the COVID pandemic.
196. In my view, the significant economic benefits that will flow from approval of the substitution application presents a compelling case for the Vintage Cellars proposal to be approved, both in terms of the construction sector spend in the fit-out and more particularly for the anticipated economic benefit in respect of the small businesses already operating at Oasis.

Change of proposal to a Vintage Cellars Outlet:

197. The Applicant has submitted that there are many differentiating features between the proposed Vintage Cellars store and the Liquorland store that was previously proposed for Oasis. Further, the Applicant submits the proposed change of brand and consequential change of range squarely addresses the issue raised by the Liquor Commission in its decision that an additional Liquorland outlet will bring no benefit to the community because it would offer no additional choice of products for consumers.
198. In its further submission Council asserts that takeaway liquor licences are not differentiated by their branding and all takeaway liquor licences have the same rights and privileges despite their branding and that the doctrine of "substance over form" applies in this case. The submissions state further that it is unclear how the Commission determined that a Vintage Cellars is fundamentally different from Liquorland as both are fundamentally takeaway liquor facilities.
199. With respect, that argument cannot be sustained on any measure. Anyone who visits a Vintage Cellars outlet will immediately notice differences in the appearance of the premises, the floor layout and the significant range of premium wine and specialised spirits on display. The findings of the NT Commission and its counterpart, the South Australian Liquor Commission, are set out at above and consistently acknowledge that Vintage Cellars outlets operate as a high-standard,

<sup>27</sup> AFS Realty & Business Brokers Pty Ltd and Nundor Pty Ltd – Liquor Commission Decision Notice - 20 October 2020

low-scale boutique liquor outlet that appeals to a particular demographic and not the demographic that would normally engage in anti-social behaviour.

200. Council also raises concerns that, once operational, the Vintage Cellars outlet could readily revert to offering a similar range of product to that on offer at all chain liquor outlets. Council submits further that there is nothing preventing Vintage Cellars from rebranding in the future or only stocking the same range that consumers demand at other outlets.

201. The prospects of that occurring, which in my opinion are slight, can be readily overcome by the inclusion of a licence condition specifying the concept of the premises. For example, the Vintage Cellars outlet in the Darwin CBD includes a specific condition which states:

This licence shall remain in force only for so long as the licensed premises shall be operated as a bottleshop selling and promoting primarily and predominantly premium quality wines and liquors consistent with the concept presented to the Director of Liquor Licensing in the application for the transfer of the licence and the substitution of premises and any subsequent variation to the licence approved by the Director of Liquor Licensing.

A similar Concept Condition could readily be imposed for the Liquorland Oasis.

202. Both Council and NT Police hold genuine and reasonable concerns that the return of a liquor outlet to Oasis will result in the return of anti-social behaviour at Oasis and the surrounding neighbourhood. The submissions in that regard to the Commission were clearly persuasive and no doubt one of the major reasons the Commission rejected the substitution application at first instance. Council and Police rely to a large extent on the same concerns in their further submissions for the purposes of this decision under Section 334 of the 2019 Act as amended.

203. In response to those concerns the Applicant has proposed additional licence conditions being imposed on the liquor licence in order to limit incidents of alcohol-related anti-social behaviour in the vicinity of Oasis, as set out in para 93.

204. In my view, the additional licence conditions, coupled with the reputation of the Applicant in terms of its RSA training, practices and procedures and compliance with its obligations under the legislation, provide a significant level of comfort that the approval of the substitution will not result in the level of public drinking and anti-social behaviour that is of concern to both Council and Police. Those conditions, coupled with the change of proposal to establish a Vintage Cellars outlet rather than a Liquorland outlet will go some considerable way to achieve the aims of minimising alcohol-fuelled anti-social behaviour at Oasis and the surrounding area.

205. During the COVID-19 pandemic the Director has exercised the emergency powers prescribed by section 257 of the 2019 Act to put measures in place aimed at curbing incidences of alcohol related anti-social behaviour and the occurrence of irresponsible and offensive drinking in public places. One of those measures was to impose a condition requiring licensees to ensure that purchasers of takeaway liquor have a legitimate address at which to consume the liquor. That condition has been in place for all takeaway liquor licensees conducting business in the Greater Darwin region, including Palmerston and extending south to Pine Creek.

206. Police have advised the measure is effective and is having a positive effect. The Director's emergency powers will cease when the COVID emergency is declared to have ended with the result the emergency licence conditions will lapse. Given the apparent positive results, Police have indicated they will be making an application to the Commission for the measure to be imposed as a permanent condition of all takeaway liquor licences. Whether such a condition will be imposed permanently is a matter for the Commission.

207. However, against that background a condition requiring customers to satisfy licensees that they have a legitimate address at which to consume takeaway alcohol is aimed at preventing drinking in public places. In my view it would assist in preventing the return of anti-social behaviour to the Oasis locality if that measure were to be a permanent condition for the proposed Vintage Cellars licence at Oasis.

208. In Superintendent Deutrom's opinion an increase in alcohol availability by the addition of another takeaway liquor licence at Oasis could further impact negatively on these figures. He stated that with the existing density of liquor licences in the area, the application does not demonstrate a need for an additional takeaway liquor outlet to satisfy public interest as there are numerous licensed premises within short distances from the proposed site, including a Liquorland outlet within 237 metres.
209. Again, of significance in terms of the Applicant's change of plans for the proposed Oasis liquor outlet, the Commission stated that in reaching its determination to refuse the substitution application it took into account that there will be no additional choice of products for consumers as, for example, might have been the case if Coles had decided to open one of its Vintage Cellars outlets at this location.<sup>28</sup> Against that finding the Commission was not persuaded that there were any real benefits for consumers in having another Liquorland so close to the existing outlet.
210. However, the Commission accepted the overall thrust of Mr Stephens' evidence that, due to a national trend of declining alcohol consumption, the proposed Liquorland Oasis outlet would have no practical impact on the overall volumes of alcohol sold in the surrounding trade area. The logical conclusion to be drawn from that finding was that an additional liquor outlet in Palmerston would not result in an increase in the volume of liquor sold but that customers who normally purchased their liquor from other outlets would shop at Liquorland Oasis.
211. In his evidence before the Commission Superintendent Deutrom stated that since the removal of the BWS store, problem drinkers and disturbances had been almost non-existent in and around Oasis and the surrounding areas. In addition he referred to anecdotal community comment to Police that Oasis had become a pleasant and safe place for the community to attend and undertake their shopping due to the lack of a liquor outlet in the shopping centre.
212. The market survey commissioned by the Applicant, and referred to above, indicates that the majority of customers interviewed, just over 75%, would prefer to have a liquor outlet at Oasis. Allowing for the results of the survey, little weight can now be given to Superintendent Deutrom's anecdotal evidence regarding a preference for a shopping centre supermarket without a liquor outlet. Only 25% of customers interviewed in the survey conducted by Kookaburra Customer indicated that to be their preference.
213. In response, counsel for the Applicant submitted it is entirely likely that the behaviour and the number of incidents have increased elsewhere in Palmerston. That is, the problems have not disappeared, they have just moved on to other areas. The Commission did not agree with that submission however it must be acknowledged that the issue of alcohol-related anti-social behaviour did not cease in the City of Palmerston with the removal of the BWS Oasis outlet and remains a significant issue in terms of Police interventions.
214. The Commission concluded that in the case of the proposed Liquorland Oasis outlet, it was not faced with a massive increase in density and did not consider it necessary to make a determinative ruling on the basis of the limited evidence before it concerning this issue<sup>29</sup>. The Commission did note however that it found the observations of Dr Livingston, referred to in paragraph 132 of its Decision Notice to be persuasive, namely that *"changes in ease of access to alcohol are likely to have only small impacts on well-resourced drinkers (e.g. those with access to a car), but may have more effect on those who are marginalised or disadvantaged"*.
215. However, the Commission did not find that granting the substitution application would arrest the ongoing national and Territory-wide declining trend in alcohol consumption.
216. The Commission accepted there would be economic benefits through the creation of at least two full time shop assistant positions and limited flow-on economic benefits to the other store

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<sup>28</sup> Ibid at paragraph 149

<sup>29</sup> Liquor Commission Decision Notice dated 3 July 2020 – Liquorland (Australia) Pty Ltd at paragraph 133

holders at Oasis complex through increased foot traffic. The Commission also took into account that existing premises will be used for the proposed liquor store resulting in little benefit for the construction industry.

217. The Applicant submits that the benefits associated with the introduction of a Vintage Cellars store in Palmerston are significant, representing a direct investment in the region of \$1.5 million, including \$800,000 in fit-out costs. The Applicant also notes the creation of additional local employment opportunities should the application be approved. The Applicant also submits that the addition of a Vintage Cellars outlet will provide opportunities for Oasis to capitalise on the \$8 million refurbishment undertaken in 2015.
218. The Applicant has also agreed to fund, at its own cost, \$50,000 in improvements and upgrades to lighting and CCTV system to improve security and surveillance in the immediate shopping centre and the surrounds including laneways and down the side of Chung Wah Terrace. In terms of economic benefit, the Applicant states it will aim to support local suppliers, including Indigenous suppliers, and will undertake to stock premium local products.
219. The majority of takeaway liquor outlets in the NT have CCTV systems installed regardless of whether it is mandated by a licence condition. That is certainly the case with the takeaway outlets operated by the Applicant. CCTV systems are installed in the licensee's own interests to monitor staff and customers to prevent theft and for other security purposes. Footage from CCTV systems is also valuable evidence for compliance officers investigating allegations of breaches of the legislation and particularly the Banned Drinker Register (BDR) requirements. It is understood that the Commission is considering imposing a CCTV licence condition on all takeaway liquor licences at some time in the future.
220. The Commission recently imposed the following CCTV condition on the liquor licence for remote a wayside inn with a takeaway authority:

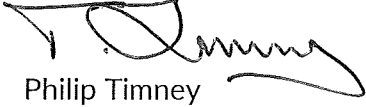
The Licensee must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (the Director), including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 28 days.

A similar licence condition could readily be imposed on the Liquorland Oasis liquor licence.

221. Taking account of the matters set out above, and in accordance with section 334(6)(a) of the 2019 Act I have, in my statutory capacity as the Director of Liquor Licensing has determined to approve the substitution of the liquor licence formerly operating as the Berrimah Supermarket to the identified premises at Oasis.
222. In making that determination, and in accordance with section 334(6)(b) of the 2019 Act, I have determined to vary the conditions of the licence, as requested by the applicant, by imposing licence conditions to reflect the matters set out above.
223. For the reasons set out below and also in accordance with section 334(6)(b) of the 2019 Act the Director has determined to impose additional conditions on the liquor licence including a "Concept Licence Condition" and a "CCTV Licence Condition".
224. The above decision is made in my capacity as the statutory officer appointed to the role of Director of Liquor Licensing. Section 334(10) of the 2019 Act as amended provides that when making a determination or decision under this section, the Director must act independently and is not subject to direction from the Minister, the Chief Executive Officer or any other person.
225. The above determination is made independently from my role as a public sector employee and I confirm that no person, including any Minister and the Chief Executive Officer, has given me any direction in respect of this determination.

## NOTICE OF RIGHTS

226. Section 334(3) of the 2019 Act as amended provides that an application that falls within the parameters of section 334 is not within the jurisdiction on the Commission. In addition, section 334(12) provides that any determination of the Director under section 334 is not reviewable by NTCAT.



Philip Timney

Director of Liquor Licensing  
17 December 2020.

# Annexure A



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## Liquorland (Australia) Pty Ltd Market Research Study Oasis Shopping Village

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Prepared for: Ward Keller on behalf of Liquorland (Australia)  
Pty Ltd

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Project number : WKNNOV2020

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# Table of Contents

- 1. Introduction..... 2
- 2. Background..... 2
- 3. Executive Summary ..... 2
- 4. Overview of key findings ..... 2
  - 4.1 Frequency of liquor purchases ..... 3
  - 4.2 Familiarity of proposed Vintage Cellars store ..... 3
  - 4.3 Support for the Coles Group application..... 4
  - 4.4 Convenience of liquor store in the shopping centre ..... 5
  - 4.5 Demographics..... 5
- Gender ..... 5
- Age ..... 6
- Ethnicity ..... 7



## 1. Introduction

Kookaburra Consulting is an independent research service based in Darwin, Northern Territory. Kookaburra Consulting was commissioned by Ward Keller to undertake a market research study on behalf of Liquorland (Australia) Pty Ltd. Ward Keller acts for Liquorland (Australia) Pty Ltd ('Liquorland') in relation to an application by Liquorland to substitute premises. Liquorland is proposing to open a Vintage Cellars store located directly next to the Coles Supermarket in Oasis Shopping Village in Palmerston.

## 2. Background

On 12 November 2020, new legislation was passed to amend the *Liquor Act 2019* ('Act') so that certain decisions made by the Liquor Commission are now of no effect and the applications captured by the amendment to the Act are to be returned to the Director of Licensing for decision (rather than the Northern Territory Civil Administrative Tribunal reviewing the decisions). There is currently an application before the Director of Licensing and this Liquorland application is captured by the amendments to the Act and the amendments commenced last Friday 20 November 2020. Liquorland has undertaken to obtain public perspective of the proposed liquor retail outlet by conducting a customer survey at the Oasis Shopping Village.

## 3. Executive Summary

Kookaburra Consulting conducted a Customer Survey in the Oasis Shopping Village, Palmerston, to capture their attitude toward the current application by Liquorland for a liquor retail outlet to be opened in the shopping centre adjacent to the Coles Supermarket.

Interviewers intercepted customers exiting the supermarket and asked them to answer 4 questions related to the application for the proposed Vintage Cellars store. A total of 431 surveys were completed across the 24<sup>th</sup> and 25<sup>th</sup> of November, 2020.

Respondents were asked 4 questions with one specific asking them to indicate if they would support the application for the proposed liquor outlet. 74.77% of all respondents stated that they would support the application. 25.23% of respondents did not support the application.

## 4. Overview of key findings

Customers who responded to the survey were asked to indicate how frequently they purchased liquor from a liquor retailer, if they were familiar with the Vintage Cellars liquor stores, if they would support the current application for the proposed liquor retail outlet and if they thought the inclusion



of the liquor retail store would provide shoppers convenience in having grocery and liquor products in the one location.

#### 4.1 Frequency of liquor purchases

Customers were asked how often they purchased liquor from retail liquor outlets. All respondents answered the question, with many advising that they didn't drink.

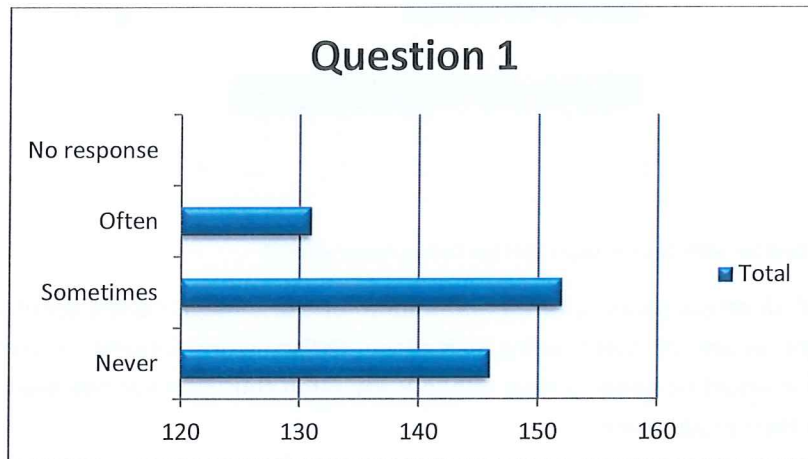


Figure 1 Q1. How often do you purchase liquor from liquor retailers?

Just over 34% of respondents (146) indicated that they didn't purchase liquor from liquor retailers. While just over 65% of respondents (283) indicated that they purchased liquor either sometimes or often.

#### 4.2 Familiarity of proposed Vintage Cellars store

Many Coles customers are familiar with the Liquorland retail outlets, however, not all respondents were familiar with the Vintage Cellars outlets.



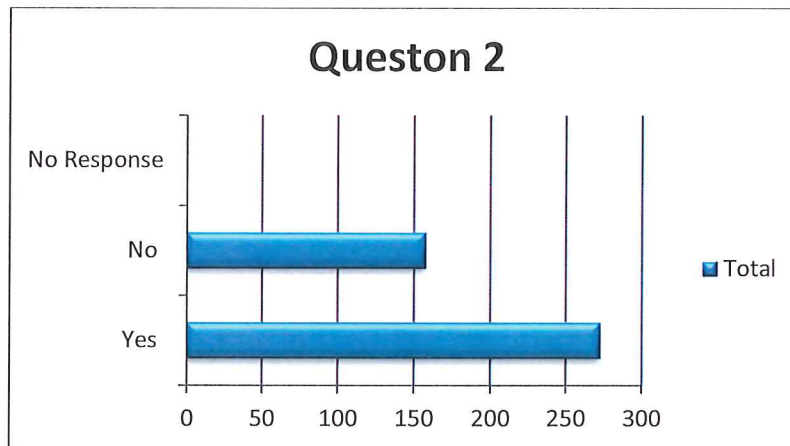


Figure 2 Q2 Are you familiar with Coles Group's Vintage Cellars liquor stores?

Well over half of all respondents, 63.34% (273) knew of the Vintage Cellars retail stores. Some respondents were aware of there being a Vintage Cellars store located in Darwin city and commented that it would be good to have one in Palmerston thus relieving the need to travel into the city to access their product lines.

### 4.3 Support for the Coles Group application

Customers were asked if they would support the current application for the opening of a Vintage Cellars retail outlet in the shopping centre. This brought both positive and negative responses.

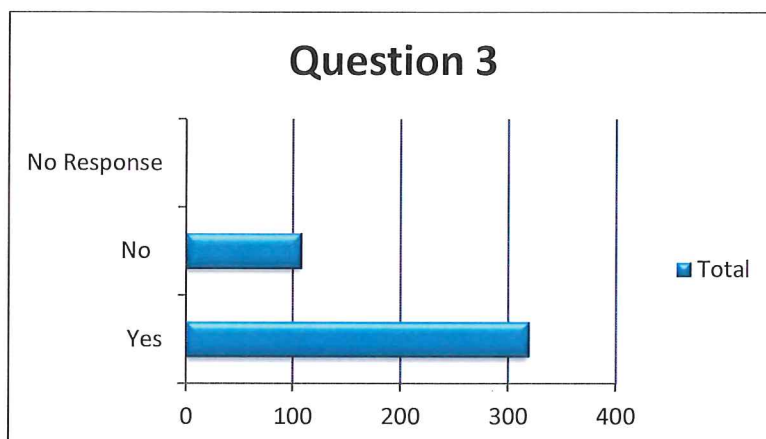


Figure 3 Q3. Would you support an application for Coles Group to open a Vintage Cellars liquor retail store, which would be located in the Shopping Centre right next to the existing Coles Supermarket?

Just under three quarters of respondents, 74.77% (320), indicated that they would support the Coles Group application to open a Vintage Cellars liquor retail store in the shopping centre. 25.23% (108) respondents did not support the application while 3 respondents chose not to comment on the question.



Table 1 Additional comments made by survey respondents

#### 4.4 Convenience of liquor store in the shopping centre

Survey respondents were asked if it was more convenient to be able do their grocery shopping and liquor shopping in the one location.

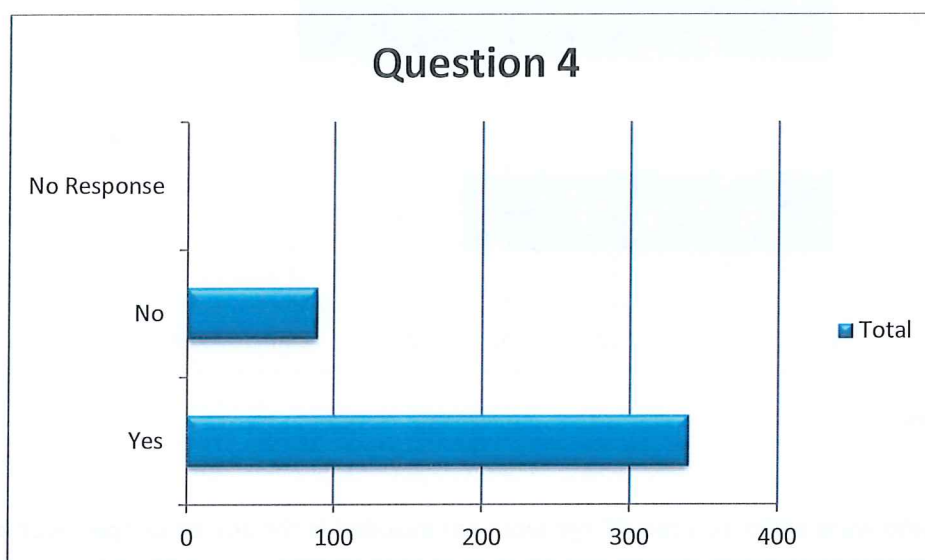


Figure 4 Q4 Do you think it would be more convenient for you to be able to do your grocery and liquor shopping in one location?

Of the 431 survey respondents, 3 chose not to respond to the question. The majority of respondents, 79.25% (340), felt that it would be convenient to be able to do both their grocery and liquor shopping in the one location. Only 20.75% (89) of the respondents did not feel there would be any convenience in the liquor store being in the centre.

#### 4.5 Demographics

The target audience was Customers of the Coles Supermarket located in the Oasis Shopping Village. Respondents were intercepted upon exiting the store and only those who were under 18 years of age were actively excluded from taking part in the survey.

##### Gender

Respondents were predominantly female with 59.09% (247). 40.91% (171) of respondents were male and 13 respondents chose not to answer this question.



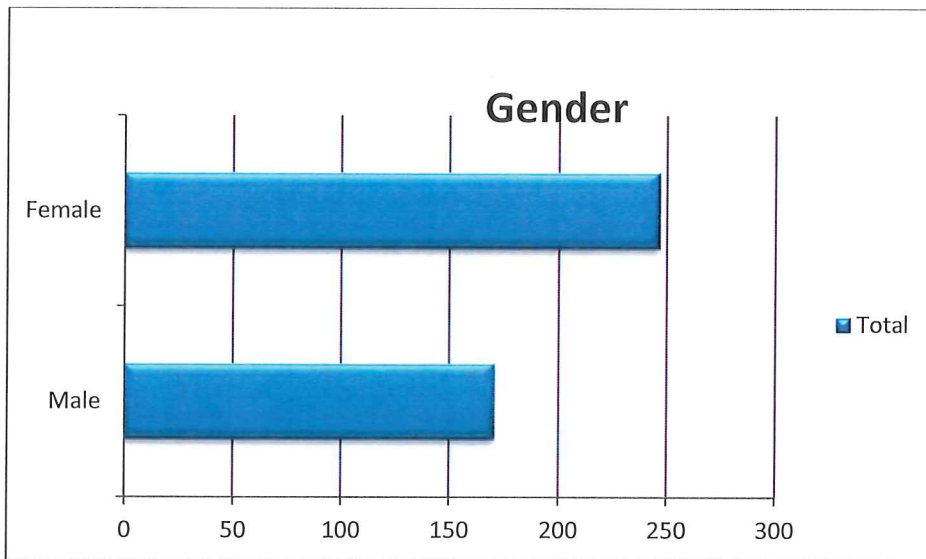


Figure 5 Are you.....

### Age

Customers who were under 18 years of age were not included in the survey sample. Just over 40% (178) of respondents were between 25 and 44 years of age with 88 between 24 and

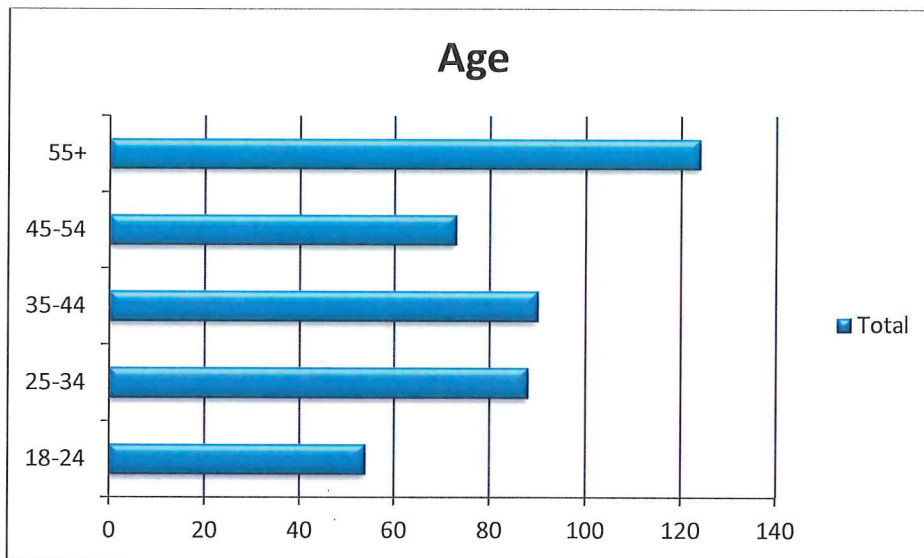


Figure 6 How old are you?



## Ethnicity

Just over 15% (71) of respondents identified as Aboriginal or Torres Strait Islander (ATSI), with a little more than 5% (24) identifying as other nationalities. The majority of respondents, just under 75% (323) did not identify as ATSI or another nationality. Only 13 respondents preferred not to say.

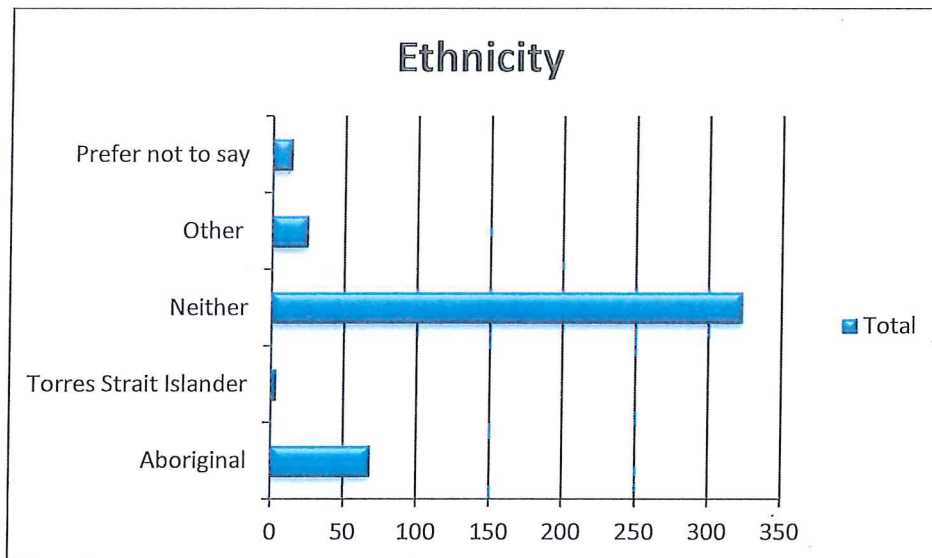


Figure 7 Are you .....

This report has been compiled by Desleigh Dunnett, General Manager of Kookaburra Consulting.

Signature:

Name: Desleigh Dunnett

Position: General Manager, Kookaburra Consulting

