

# 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:** 81000242

**PREMISES:** BWS – Beer Wine Spirits (Stuart Park)  
Shop 1, 27 Stuart Highway  
Darwin NT 0800

**APPLICANT:** Woolworths Group Ltd

**LEGISLATION:** Sections 32A, 46A, Part IV and V of the *Liquor Act 1978* & 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 located in Stuart Park and previously trading as BWS Stuart Park to new premises located at Osgood Road, Eaton.
2. That approval is subject to a condition that the licensee will not trade in the sale of liquor at the new premises until such time as it has demonstrated, to the satisfaction of the Director, that it has obtained all necessary regulatory approvals for the premises which are yet to be constructed.
3. 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 and as set out below in this Decision Notice, including to reduce the trading hours for the premises as requested by the Applicant in its initial application heard by the Liquor Commission.
4. 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 a CCTV Surveillance condition, conditions in respect of on-line sales and delivery of liquor by the licensee and a requirement for the licensee to ensure, in certain circumstances, that customers purchasing takeaway liquor have a legitimate residence at which to consume the liquor.

### BACKGROUND

#### Application to the Liquor Commission:

5. On 19 July 2018 Woolworths Group Ltd (**the Applicant**) lodged two applications (**the Applications**) with the former Director-General of Licensing (**the Director-General**). The first application sought to substitute the liquor licence for premises known as BWS – Beer Wine Spirits (Stuart Park) situated at Shop 1, 27 Stuart Highway, Darwin (**the existing premises**) to premises to be constructed and located at the corner of Bagot Road and Osgood Drive, Eaton

(the proposed premises) pursuant to section 46A of the *Liquor Act 1978* (the 1978 Act) for the purpose of opening a Darwin Dan Murphy's liquor store.

6. The second application sought a variation of the licence conditions to reduce the trading hours under the liquor licence from Monday to Friday between the hours of 10.00 am and 9.00 pm and for Saturday and Public Holidays between the hours of 10.00 am and 10.00pm. The trading hours for Stuart Park premises at the time of the application were Monday to Friday between the hours of 10.00 am and 10.00 pm and for Saturday and Public Holidays between the hours of 9.00 am and 10.00 pm.
7. As per the usual practice, the Applications were advertised by notice published in the NT News on 4 August 2018. The notice advised of a 30 day period during which objections to the Applications could be lodged. Following that advertisement of the Applications, seventeen objections were received.
8. On 5 September 2018 the Applicant's solicitor was provided with details of the objections as required by section 47G of the 1978 Act and provided with an opportunity to respond to the objections.
9. The referral of the Applications to the Liquor Commission (the Commission) was delayed for some considerable time for numerous reasons, as set out in the Decision Notice published by the Liquor Commission on 20 September 2019<sup>1</sup>.
10. At a directions hearing convened on 26 February 2019 the Australian Hotels Association (NT Branch) (AHA NT) sought leave to appear pursuant to section 51(c) of the 1978 Act. The Commission granted leave to AHA NT to appear at the hearing at a further directions hearing on 26 March 2019.
11. The Bagot Community and the Gwala Daraniki Association (GDA) also sought and were granted leave by the Commission to appear at the hearing pursuant to section 51(c) of the 1978 Act on the basis that these organisations represented the Aboriginal residents of the Bagot, Kulaluk and Minmarama communities.
12. The hearing of the Applications by the Commission took place on 4 to 7 and 11 June 2019. On 20 September 2019 the Commission published a comprehensive Decision Notice setting out its reasons for refusing to approve the substitution of the licensed premises, pursuant to section 46A(6) of the 1978 Act. The Commission did not vary the trading hours of the liquor licence pursuant to section 32A(7) of the 1978 Act as the Applicant had indicated that, if the substitution application was refused, it did not wish to proceed with the application to vary the conditions of the licence.

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

13. On 18 October 2019 the Applicant lodged an application for review of the Commission's decision with the NTCAT. The Foundation for Alcohol Research and Education (FARE), one of the objectors in the hearing before the Commission, subsequently filed an application with NTCAT to have two preliminary issues determined prior to the conduct of the substantive NTCAT review. Namely:
  - a) whether an application for substitution of a liquor licence can only be made for substitution to other premises that currently exist; and
  - b) whether a substitution application can only be made to facilitate the continuation at other premises of the business licensed to be operated at the former licensed premises.
14. Of the parties who appeared at the hearing before the Commission, only the Applicant, the Commission and AHA NT participated in the NTCAT proceedings.

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<sup>1</sup> Paragraph 8 - Decision Notice of the Liquor Commission dated 20 September 2019

15. On 23 December 2019, the NTCAT President published his decision notice<sup>2</sup> and dismissed the Applicant's application on the grounds that section 46A of the *Liquor Act 1978* did not permit the substitution of a liquor licence from existing premises to premises that are yet to be constructed.
16. In reaching his determination the NTCAT President noted the following matters:
  - a. [The] decision has nothing to do with whether or not the tribunal agrees with the Liquor Commission's decision.
  - b. It has nothing to do with whether or not a Dan Murphy's in Darwin would be a good idea.
  - c. Instead, the decision turns upon whether it was legally open to Woolworths to make the application in the first place.
  - d. The tribunal has concluded that the liquor licensing laws applicable to the application made by Woolworths did not permit such an application for premises that had not yet been built.
  - e. For that conclusion to be understood, it is very important to note that Woolworths' application was not for a new liquor licence, but to 'substitute' the proposed Dan Murphy's store for premises in a liquor licence it already owns.
  - f. The applicable liquor licensing laws had the effect that substitution of non-existent premises was not permitted.
  - g. Under those laws, the fact the Dan Murphy's premises had not yet been built would not have prevented Woolworths applying for a new liquor licence for those premises; however, the Liquor Commission would not have been able to grant such a licence, because there is a five year moratorium on the grant of new takeaway liquor licences.<sup>3</sup>

### **Application to the Supreme Court of the Northern Territory:**

17. On 7 January 2020 the Applicant filed an application with the Supreme Court seeking leave to appeal the NTCAT decision regarding the interpretation of section 46A of the 1978 Act, the substitution provision.
18. The Liquor Act Amendment Bill 2020 was passed on 26 March 2020. The Bill clarified the issues surrounding the substitution of liquor licences and addressed the issues that were the subject of the Supreme Court proceedings. The amended section 75 of the *Liquor Act 2019* (the 2019 Act) now provides:
 

*75 Substitution of premises*

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

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

  - (a) *impose conditions on the substitution; and*
  - (b) *substitute premises that are not yet constructed or are still under construction.*  
(*Emphasis added*).
  - (3) *An application to substitute premises is to be made in the same manner as an application to vary conditions of the licence under Part 4, Division 5.*

<sup>2</sup> *Woolworths Group Limited v Northern Territory Liquor Commission, Foundation for Alcohol Research and Education Ltd & Ors* [2019] NTCAT 37

<sup>3</sup> *Ibid* at paragraphs 5 to 11

19. Following commencement of the amended section 75 of the 2019 Act, on 20 April 2020 the parties to the Supreme Court proceeding signed consent orders seeking the discontinuance of the proceeding with no order as to costs. The Supreme Court subsequently issued orders discontinuing the proceeding.

**Applicant's second application for review of the decision of the Liquor Commission by NTCAT:**

20. On 23 April 2020 the Applicant filed a second initiating application with NTCAT, again seeking a review of the Commission's decision. FARE filed a notice of appearance confirming that it would appear in the NTCAT review proceeding and engaged counsel for that purpose. The remaining objectors to the original application before the Commission indicated they did not intend to participate in the NTCAT review proceeding.
21. In the second application for review the Applicant sought orders from NTCAT setting aside the Commission's decision and substituting a decision approving the substitution of the BWS Stuart Park licence to the proposed Darwin Dan Murphy's premises in Eaton.
22. Following a directions hearing NTCAT issued preliminary orders in respect of the time for filing of lay and expert evidence. The review was listed for a five day hearing commencing on Monday 14 December 2020. The proceeding was listed for a further directions hearing on 6 November 2020. The hearing date was subsequently deferred until February 2021.

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

23. 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 on 19 November 2020. 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.
24. 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, on the commencement, subject to an application for a review or rehearing by NTCAT that was lodged before the commencement under section 31 or 326 of this Act; and
- (iv) was not determined by NTCAT under section 75(2) and (2A) of this Act before the commencement.

25. 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.
26. Section 334(1)(a) 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.

27. In terms of the application for the substitution of the BWS Stuart Park liquor licence for the purpose of opening the proposed Darwin Dan Murphy's liquor store, the following facts are apparent:
- The Applicant lodged the application for the substitution of the BWS Stuart Park liquor licence from the current premises to new premises – sub-section 334(1)(a);
  - The application was made under the Liquor Act 1978 (**the 1978 Act**) on 19 July 2018 – section 334(1)(i);
  - The application for substitution was refused by the Commission by decision notice published on 20 September 2019 – section 334(1)(ii);
  - The application is the subject of a rehearing by NTCAT following the Applicant filing an initiating application with NTCAT on 23 April 2020 – section 334(1)(iii); and
  - The Application for review by NTCAT had not been determined prior to the commencement date of the 2020 amendments to the 2019 Act – section 334(1)(iv).
28. It is abundantly clear that the application under consideration meets all of the requirements set out in section 334(1)(a) 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 from the commencement date of 20 November 2020 being 20 December 2020.
29. Following determination of an application under section 334(2) the Director must, pursuant to section 334(1) of the 2019 Act 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.*
30. 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:**

31. 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).*
32. As noted above, the Applicant made two applications for review of the Commission's decision by NTCAT. The first application was dismissed by NTCAT on the basis of the issues set out above in respect of the interpretation of section 75 of the 1978 Act, the substitution section. Those issues were resolved by the amendments to the 2019 Act that commenced on 26 March 2020.
33. The second application for review by NTCAT was lodged by the Applicant on 23 April 2020. That application was terminated on 20 November 2020 by section 334(13)(a) of the 2019 Act as amended. As of that date NTCAT had held a number of directions hearings and issued orders of a procedural nature in respect of the conduct of the review.

34. 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 did not receive any submissions or evidence in relation to the application.

## CONSIDERATIONS BY THE LIQUOR COMMISSION

35. The application lodged with the Commission by the Applicant included two elements. Firstly, an application under section 46A of the 1978 Act to substitute the BWS Stuart Park Licence from the existing premises to new premises situated at Osgood Road in the suburb of Eaton. Secondly, and subject to the substitution application being approved, an application under section 32A of the 1978 Act to permanently vary the liquor licence conditions to reduce the trading hours for the sale of liquor.
36. Schedule 3 of the Liquor Regulations 2019 (the Regulations) provides that the trading hours for a takeaway authority liquor licence in the Darwin region are:
- Monday to Friday: 10:00 to 22:00  
 Saturday and Public Holidays: 9:00 to 22:00  
 No trade on Sundays, Good Friday and Christmas Day
37. The application for variation of licence conditions sought to reduce the trading hours as follows:
- Monday to Friday: 10:00 to 21:00  
 Saturday and Public Holidays: 10:00 to 22:00
38. Following advertisement of the application 17 objections were received. Of the objections, eight were lodged by community and health organisations and 10 were lodged by individuals. In addition, the Commission granted leave to appear to the Bagot Community and to GDA representing the Kulaluk and Minmarama Communities on the basis those communities are situated in proximity to the proposed Darwin Dan Murphy's site. In addition, the Commission granted leave to appear to the Australian Hotels Association (NT Branch) as it was known at that time, now known as Hospitality NT.
39. As required by sections 32A(5) and 46A(4) of the 1978 Act, comment was sought from the Department of Health, NT Police and the City of Darwin. The responses from those stakeholders are set out in paragraphs 25 and 26 of the Commission's Decision Notice. Whilst the comments raised a number of concerns in respect of the substitution application, none of those stakeholders lodged a formal objection to either of the applications.
40. The Hearing Brief provided to the Commission included in excess of 4,000 pages of submissions and supporting documentation lodged by the Applicant and the objectors.
41. The legislative framework for the assessment of the applications before the Commission and the matters the Commission is required to take into account in reaching its determination are set out in considerable detail in paragraphs 33 to 62 of the Commission's Decision Notice.
42. Nine witnesses, including lay and expert witnesses, gave evidence on behalf of the Applicant via witness statement and/or oral evidence before the Commission. Eleven witnesses, again both lay and expert witnesses, presented evidence to the Commission on behalf of the objectors and the parties who had been granted leave to appear. The Commission summarised the evidence of each of the witnesses at paragraphs 63 to 110 of its Decision Notice.

### **Preliminary Issues Considered by the Commission:**

#### **Moratorium on the grant of new takeaway liquor licences**

43. In the course of the Hearing of the applications the Commission was required to deal with a number of preliminary issues. At paragraphs 111 to 122 the Commission considered the nexus between the application to substitute a takeaway liquor licence from current premises to new premises and the five year moratorium on the grant of new take away liquor licences.

44. Consideration of that issue by the Director is negated by section 334(14)(b) of the 2019 Act as amended. That section provides that a determination by the Director has effect despite section 84(3) of the 2019 Act which provides that no takeaway authority may be created or issued until after 31 August 2023 or any later date extended under subsection (4).

**Status of the Stuart Park BWS Liquor Licence:**

45. The legal representatives for a group of the objectors submitted to the Commission that the substitution of the Stuart Park BWS Liquor Licence could not be approved on the basis the store had ceased to trade and therefore the liquor licence was no longer in force. That issue is considered in paragraphs 123 to 130 of the Commission's Decision Notice.
46. The Commission concluded that the liquor licence remained in force, and was able to be substituted to new premises, as it had not been surrendered, suspended or cancelled as of the date of the hearing of the application by the Commission. That issue is a matter of statutory interpretation and, as at the date of the within decision, it remains the position that no action has been taken to surrender, suspend or cancel the Stuart Park BWS Liquor Licence. On that basis, I see no reason that would persuade the Director to reach a different conclusion in terms of the Commission's finding that the liquor licence remains in existence and is therefore able to be substituted to new premises.

**Whether the Commission can approve a substitution of liquor licence subject to conditions:**

47. A further issue arose during the conduct of the Hearing before the Commission as to whether the Commission is authorised to approve a substitution of premises subject to the imposition of additional licence conditions. The Commission's consideration of that issue is referred to in paragraphs 131 to 134 of the Commission's Decision Notice.
48. That issue was resolved via a legislative amendment to section 75 of the 2019 Liquor Act by the insertion of sub-section 2A which now provides:
- (2A) To avoid doubt, the Commission may, under subsection (2):*
- a) impose conditions on the substitution;*
49. In addition, section 334(6) of the 2019 Act as recently amended provides that Director is authorised, when approving the substitution of a liquor licence that falls within the parameters of section 334(1)(a), to impose or vary the conditions of the licence.

**Operation of the existing Stuart Park BWS Store prior to its closure:**

50. The Commission's consideration of this preliminary issue is set out at paragraphs 135 to 139 of the Commission's Decision Notice. The Commission concluded that its consideration of the substitution of the small Stuart Park BWS Store for the purpose of establishing the proposed Darwin Dan Murphy's outlet would necessarily require consideration of the volume of liquor expected to be sold if the substitution were to be approved.

**Community Locality and Neighbourhood:**

51. In accordance with the requirements of the 1978 Act the Commission is required to determine the neighbourhood or community area that may be impacted by a decision to grant or refuse an application in respect of a liquor licence. Refer to paragraphs 140 to 156 of the Commission's Decision Notice.
52. The Commission noted that given the size of the operation of the proposed Dan Murphy's outlet the Applicant's concession that the community area should be 25 km for the purpose of assessing the status of objectors and determining whether objectors reside within the neighbourhood of the proposed premises. The Applicant conceded that a 25 km radius from the proposed outlet would be impractical for the consideration of potential harm or nuisance adversely impacting the "neighbourhood".

53. At paragraph 149 of its Decision Notice the Commission accepted that the proposed Primary Trade area was a radius of 5 km from the proposed site and the proposed Total Trade area was a 25 km radius from the proposed site.
54. The Commission also determined, at paragraph 156 of its Decision Notice, that the “immediate locality” for the purpose of considering potential harms and health impacts on the near-by Aboriginal communities should be a radius of two km from the proposed site. In my view the determination of the different community areas for the purposes of the differing assessments to be made by the Commission under the Act was reasonable and, in respect of the Primary Trade area and Total Trade area, conceded by the Applicant.

**Demographics within a 2 km radius of the proposed outlet:**

55. The Commission identified the following as being at-risk groups situated within a 2 km radius of the proposed outlet, that being the area most likely to be adversely affected due to the close proximity to the proposed premises<sup>4</sup>:
- a) Persons camping in bushland around the site close to Osgood Drive and separately in different camps in bushland east of Dick Ward Drive, south of Totem Rd, west/south west of Karu Park and north of Fitzer Drive;
  - b) The Darwin Indigenous Men’s Service (**DIMS**) situated approximately 500 metres of the proposed outlet; which would be clearly visible to those people attending DIMS.
  - c) RAAF Darwin Golf Club who expressed concerns that aboriginal drinkers would camp on the golf course if the licence was granted;
  - d) The Bagot Aboriginal Community situated within 1.1 km of the site and accessible by a 15 minute walk.
  - e) The Minmarama Park Community is situated 1.7 km from the site accessible by a 20 minute walk and Kulaluk Aboriginal Community situated 1.9 km from the site and accessible by a 25 minute walk.
56. As is apparent from the Decision Notice that a significant concern to the Commission in respect of the application and the ultimate decision to refuse to approve the substitution of the liquor licence to the new premises at the Bagot Road site was the close proximity to the Bagot, Minmarama and Kulaluk Aboriginal communities.
57. The Bagot Community comprises 60 houses and between 180 to 250 permanent residents, with that number increasing to around although the numbers of persons staying in the community can increase up to around 500 residents at specific times of year. The Bagot Community is an alcohol restricted area in which it is prohibited to possess, consume or sell alcohol<sup>5</sup>.
58. Ms Helen Fejo-Firth has been a resident of the Bagot Community for 21 years and is President of the Bagot Community Advisory Group. In her evidence before the Commission Ms Fejo-Frith referred to a number of alcohol related issues that adversely impacted on the residents and amenity of the Community. She raised significant concerns related to residents of the Community being killed or injured when attempting to cross Bagot Road, one Darwin’s major arterial roads, and Dick Ward Drive in the vicinity of the Kulaluk Community. Ms Fejo-Frith stated that the proposed Dan Murphy’s outlet should not be put on Bagot Road and that there are other places at which it could be put<sup>6</sup>.
59. Ms Fejo-Frith also informed the Commission that the Community has significant issues with domestic violence and the neglect of children whose parents are drinkers. In her evidence she

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<sup>4</sup> Ibid at paragraph 161

<sup>5</sup> Ibid at paragraph 162

<sup>6</sup> Ibid at paragraph 165

stated that situation would be worsened by the addition of a further liquor outlet in an area that already has a significant number of liquor outlets<sup>7</sup>.

60. The lease for Minmarama Park and Kulaluk Aboriginal Community is held by GDA. The Kulaluk Community comprises 9 residences and is home to approximately 40 residents. The Minmarama Park community comprises 24 residences with approximately 100 residents. Both communities are alcohol protected areas in which the possession, consumption and sale of alcohol are prohibited. The residents of those communities are predominantly members of the Secretary family including the extended family.
61. Ms Helen Secretary is President of the GDA and gave evidence before the Commission on behalf of the Minmarama and Kulaluk communities. Ms Secretary gave evidence that issues in respect of alcohol-related domestic violence and anti-social behaviour were issues of concern in her community but that incidents of that nature had decreased since 2015/2016. She also raised the potential risk to residents of the communities in being involved in traffic accidents and fatalities when crossing Bagot Road on foot to attend the proposed Dan Murphy's outlet. She also stated that it was unlikely that community residents would use pedestrian crossings even were they to be installed at the intersection of Bagot, Totem and Osgood Roads<sup>8</sup>.
62. In her evidence before the Commission Ms Secretary stated that in her opinion alcohol related problems would increase if the proposed Dan Murphy's outlet was approved due to alcohol being available at cheaper prices. In her view community residents and people visiting Darwin from other remote Aboriginal communities would be attracted to Dan Murphy's due to lower prices for alcohol<sup>9</sup>.

#### **Demographics within a 5 km and 25 km radius of the proposed outlet:**

63. The Commission also considered the demographics within the 5 km and 25 km radius from the proposed Dan Murphy's outlet<sup>10</sup>. Of significance in terms of the issues the Commission considered in terms of the impact of the proposed substitution was the evidence of Dr Sarah Giles<sup>11</sup>, Clinical Director of Danila Dilba Health Services which also manages the Bagot Community Clinic.
64. Dr Giles stated that although Bagot is a dry community alcohol abuse continues to have an adverse effect on not only problem drinkers but also the at risk groups which include women and children who suffer harms through alcohol related violence.
65. Dr Giles stated that clients who attend the Bagot Community Clinic from the Northern Suburbs usually travel there by car or bus travelling along Bagot Road. Bus travellers alight at the bus stop on the opposite side of Bagot Road to the Bagot Community. From that point public transport users are required to cross the six lane high traffic volume Bagot Road in order to reach the clinic.
66. Dr Giles gave evidence that Danila Dilba's service population includes over 800 homeless people who denote their address as "Darwin long-grass" or "Palmerston long-grass". Dr Giles evidence was that 50% of that cohort reported drinking six or more days per week and that three quarters of those were drinking at high risk levels. She stated further that takeaway alcohol was the primary source of alcohol for the "long-grass" population.

#### **Public Interest and Community Impact Test:**

67. The Commission set out the criteria in respect of the public interest and community impact test against which it was required to assess the substitution application<sup>12</sup>. The Commission also

<sup>7</sup> Ibid at paragraph 168

<sup>8</sup> Ibid at paragraphs 170 to 173

<sup>9</sup> Ibid at paragraph 175

<sup>10</sup> Ibid paragraphs 176 to 182

<sup>11</sup> Ibid at paragraph 179

<sup>12</sup> Ibid at pages 50 to 58

conducted an extensive review of sensitive areas and premises within a 5 km radius of the proposed Dan Murphy's site identified by the Applicant. The Commission noted that it considered the Applicant's list of community facilities and at-risk areas and premises, apart from the Darwin Indigenous Men's Service, was a realistic description of the places the Commission should have regard to under the Community Impact Assessment Guidelines<sup>13</sup>.

**Applicant's Proposed Risk Minimisation Strategies:**

68. The Commission heard evidence from the Applicant in respect of its Responsible Service of Alcohol (**RSA**) Policies through Ms Kay Attard, National Manager for Responsible Service. Ms Attard's evidence is set out in some considerable detail in paragraph 206 of the Commission's Decision Notice and is relied upon for the purpose this Decision Notice.
69. In addition, the Applicant has in place policies that are specific to its liquor retail business in the NT. Namely, policies relating to the Banned Drinker Register and the Minimum Sale price for alcohol which are not applicable in other jurisdictions across Australia.
70. The Applicant also made submissions to the Commission in respect of additional measures it would implement voluntarily to assist in harm minimisation if the substitution application were to be approved. Those measures include:
- No external product advertising;
  - Security lighting in all external areas during non-trade hours;
  - Installation of a CCTV system throughout the store, at the entrance to the store and facing the store's carpark;
  - Installation of fencing around the perimeter of the external plant area and the loading dock;
  - Installation of a "smart pole" connected to the Police network and operating 24 hours per day 7 days per week; and
  - Installation of a "back to base" alarm system.
71. Apart from the prohibition of external product advertising, which has now been mandated by the Liquor Regulations 2019, the additional measures proposed by the Applicant go beyond what is required by the current legislation.
72. The Applicant also made submissions to the Commission as to the specific measures it would implement to address issues relating to "at risk" communities in the vicinity of the proposed premises<sup>14</sup>. Those measures included roaming security patrols covering the store and immediate vicinity as well as the suburb of Eaton generally and the funding of Police Auxiliary Liquor Inspectors (**PALIs**) at the store.
73. The Commission did not consider the proposal for roaming security patrons to be an appropriate risk-minimisation measure as, in its view, residents of nearby suburbs, including the Bagot community, would prefer that the drinkers remained on the airport land rather than bringing their drinking and anti-social behaviour back to residential environments<sup>15</sup>.
74. The Commission did not endorse the Applicant's proposal to fund the engagement of PALIs at the store for a number of appropriate reasons. In any event, Police subsequently advised the Applicant that there was no appetite for the PALI model in the Greater Darwin area<sup>16</sup>.
75. In considering the Community Impact the Commission specifically addressed the Applicant's failure to properly consult the nearby Aboriginal communities prior to committing to the location

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<sup>13</sup> Ibid at paragraph 204

<sup>14</sup> Ibid at paragraph 207

<sup>15</sup> Ibid at paragraph 210

<sup>16</sup> Ibid at paragraph 209

of the proposed store at the Osgood Drive / Bagot Road site. At paragraph 212 of its Decision Notice the Commission stated:

212. The Applicant still complains that the local indigenous communities refused to consult with it despite numerous entreaties to do so "over the last few months". However, it is apparent on the evidence that contact was only made with those communities well after the matter had been referred to the Commission and the Applicant had obviously committed to this site for its proposed Dan Murphy's outlet. **If the Applicant had been hoping for a meaningful dialogue with those communities it should have sought their views prior to deciding to locate the site in such close proximity to their homes.** (Emphasis added).

76. For reasons that will become apparent later in this decision notice, the Applicant has subsequently addressed the shortcomings identified by the Commission in terms of consultation with the Aboriginal communities.

#### **Liquor Sales Volumes and Density:**

77. In determining whether or not to grant an application for substitution of licensed premises the Commission was by section 6A of the 1978 Act, required to consider the matters set out in the Community Impact Assessment Guidelines. One of the criterion specified in the Guidelines is the volume of liquor sales within the community area in which the liquor licence operates or is proposed to operate.

78. That criterion directs the Commission to consider projected sales volumes and marketing analysis, liquor type and customer demographic and, where applicable, for both on and off premises sales. The Commission is also required to consider information available to it about the current alcohol consumption rates for the community area and the potential for any increase in the volume of liquor sales to adversely impact on the community area.

79. The Commission set out its findings in respect of the potential increase in the volume of liquor sold within the community area, should the substitution of licence be approved, in some considerable detail at paragraphs 217 to 267 of its Decision Notice. The Commission's analysis and findings in that regard were significantly informed by statistical data in respect of the wholesale liquor sales within the community and the evidence of experts and non-experts called by the Applicant and the objectors. That evidence was presented to the Commission via written statements, oral evidence and included the cross examination of the lay and expert witnesses.

## **FURTHER SUBMISSIONS ON BEHALF OF THE APPLICANT**

80. 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, and invited the Applicant to provide the Director with any further materials or information that it wished to be taken into account in determining the applications that were previously before the Commission.

81. On 27 November 2020 the General Manager, Corporate Services, Endeavour Drinks, on behalf of the Applicant, forwarded to the Director further submissions and materials in support of the application for substitution of premises. Following is a summary of those submissions.

#### **Proposed Alternative Premises**

82. As authorised by section 334(4)(a) of the 2019 Act, the Applicant proposed an alternative location for the substituted premises in respect of the substitution application. The alternative location is located on Osgood Drive, opposite the intersection of McMillans Road and Sabine Road **(the McMillans Road site)**<sup>17</sup> and approximately 1.3 kilometres by road from the former

<sup>17</sup> The new site is actually located on Osgood Drive. However, to avoid confusion with the original site, also on Osgood Drive, the new site is referred to in this Decision Notice as the McMillans Road site.

Bagot Road site. The Applicant provided a site plan showing the location of the McMillan Road site. In addition the Applicant provided a schematic plan showing a proposed new intersection upgrade at a new intersection to be constructed at McMillans Road and Sabine Road intersection.

83. The Applicant advised that the lease agreement with Northern Territory Airports Pty Ltd (**NT Airports**) will for the McMillans Road site will be on substantially the same terms as the previous lease agreement for the Bagot Road site. The Applicant also noted that the layout and design for the liquor outlet at the McMillans Road site would be almost identical to what was proposed at the previous Bagot Road site and that the Dan Murphy's at the McMillans Road site will be operated in an identical manner as the store would have been operated at the Bagot Road site. Further, the revenue and sales mix for the McMillans Road site is expected to be materially the same as was presented to the Commission for the Bagot Road site.

#### **Objections from nearby Aboriginal Communities and Danila Dilba:**

84. As noted above, the Bagot Community, Minmarama Park and Kulaluk Communities and Danila Dilba Health Service objected to the initial substitution application that was heard and determined by the Commission.
85. In support of the further submissions the Applicant provided correspondence received from representatives of the Aboriginal Communities and Danila Dilba. That correspondence is attached to this decision notice at Annexures A, B and C.

#### **Additional Harm Minimisation Measures:**

86. In its further submissions the Applicant refer to and rely on its reputation as a market leader in the area of responsible service of alcohol and commits to additional measures to mitigate alcohol-related harms to the community that may potentially arise from the opening of a Dan Murphy's liquor outlet. In that respect the Applicant relies on the high standard of policies and procedures adopted by Applicant in the operation of Dan Murphy's and BWS sites throughout Australia including in the Northern Territory.
87. The further submissions state that the applicant will adopt additional measures in addition to those proposed to the Commission.
88. Currently the Minimum Sales Price (MSP)<sup>18</sup> for the sale of liquor in the NT, is set at \$1.30 per standard drink. The Applicant commits to putting in place a voluntary MSP on the following categories of liquor products that would be sold from Darwin Dan Murphy's outlet should the substitution application be approved:
- Beer - \$1.35 per standard drink;
  - Wine - \$1.40 per standard drink;
  - Fortified wine - \$1.40 per standard drink; and
  - Glass spirits - \$1.35 per standard drink.
89. In addition, the Applicant has stated that it will not sell cask wine or fortified wine in packages greater than 750 ml from the premises and that it will not advertise the Dan Murphy's 'lowest liquor price guarantee' on the exterior of the store or in any local advertising.

#### **Engagement Strategy:**

90. The Applicant has committed to the development of an engagement strategy with the nearby Indigenous communities and stakeholders (copy attached at Annexure D). The engagement strategy is to be facilitated by an independent consulting firm and will be capable of being assessed in respect of the Applicant's compliance with the strategy and performance.

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<sup>18</sup> The Minimum Sales Price (MSP) is variously referred to as the Minimum Unit Price (MUP) and the Minimum Floor Price (MFP). For the purpose of this Decision Notice the terminology used in the section 121 of the Liquor Act 2019, Minimum Sales Price, is adopted.

91. The Applicant has also committed to continued engagement with the GDA and Larrakia Nation on issues of concern to those groups including traffic, the creation of potential employment opportunities and cultural, awareness training for staff of the proposed liquor outlet. The Applicant states that it will not advertise products which are identified as being products of choice of at risk drinkers.
92. The Applicant submits that it will consent to the proposed additional harm minimisation measures being included as conditions of the liquor licence should the application be approved and should the Director consider that to be appropriate.

#### **Expert Report of Professor Roberta Ryan:**

93. The Applicant also submitted an expert report prepared by Professor Roberta Ryan<sup>19</sup> who also presented an expert report for the hearing conducted by the Commission in respect in June 2019. She notes that her recent instructions from the Applicant include providing her opinion regarding the re-location of the proposed Dan Murphy's outlet to the McMillans Road site.
94. Professor Ryan states that she was instructed by the Applicant to undertake a further site visit during February 2020 to again observe and to further engage in consultation with stakeholders, including to engage as fully as practicable with the local communities.
95. In part 3 of her report Professor Ryan notes the proposed location of the store, including both the current and previously proposed locations, require specific attention as they include the opportunity for public liquor consumption in the location, the proximity to the airport providing easy access to the store for people coming into Darwin from remote communities, the location between McMillans Road and Osgood Drive which has been the site of a number of fatalities, and its relative proximity to the three communities.
96. Professor Ryan notes that the application is for a take-away liquor licence and opines that, with effective store and precinct management, little negative impact should be evident at the location itself. She states that a key consideration is the community needs and current and future support for people who are risky drinkers in the three proximate Indigenous Communities and that the store should not pose additional pressures on those communities. She states further that the re-location of the proposed premises does not change the opinions she formed in her evidence before the Commission.
97. Professor Ryan notes that the NT is one of just a few places in the world where the BDR and the MUP have been introduced and states that these types of interventions are considered some of the most effective in reducing alcohol purchase, consumption and related harms. In her opinion it is a combination of measures which maximise effectiveness along with a coordinated approach between policing, local communities, treatment and support facilities aids success, along with a combination of supply and demand measures.
98. Professor Ryan states that in her February 2020 engagement with key stakeholders it was apparent that the three nearby Indigenous Communities were concerned with the potential negative impacts that the location of this store might pose for their ongoing efforts to help and support these communities, and particularly those members of these communities who have problems with drinking at harmful levels.
99. In respect of the additional mitigation measures proposed by the Applicant, Professor Ryan states that these mitigation measures remain as relevant as to the previous location. They are a combination of precinct, point of sale and broadly based engagement with long term prevention measures to support positive outcomes for the whole community and specifically risky drinkers. She also notes that these measures go beyond, point of sale harm minimisation practices which operate in other Dan Murphy's stores and offer the best combination possible of known success measures.

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<sup>19</sup> Professor Ryan is a political sociologist with over 30 years' experience in both the public and private sectors.

100. Professor Ryan refers to the Applicant's Engagement Strategy and states this initiative will enable the communities, stakeholders and the Applicant to address emerging issues and provide a means of assessing the success of the mitigation measures as they are implemented. She states that the Strategy takes account of specific features attributable to the location at which the Dan Murphy's outlet is proposed to be situated. Namely:
- (a) The proximity to the three Indigenous Communities, which for the purposes of assessing potential impacts are not materially changed by the changed location of the application;
  - (b) The current long-grassing activities, the proximity to the airport, and the variety of other precinct businesses that require precinct coordination and interventions.
  - (c) The known potential enablers of risky drinkers (such as potential susceptibility to low prices or sales, avoidance of detection on the banned drinkers register etc.) require price and refusal of service features.
  - (d) The importance of providing ongoing support measures which are not directly linked to issues arising from this Application, such as safe accommodation places.
101. Professor Ryan states that, in her opinion, the mitigation measures proposed by the Applicant are as broad ranging and potentially effective as they can reasonably be to support responsible drinking choices, to enable those working with risky drinkers to support them and those faced with regulating and policing the negative individual and community impacts of alcohol related harms. She states further that international evidence, along with the comprehensive work and measures proposed in the Riley Review<sup>20</sup>, when aligned with the positive commitment of the Applicant to be part of the solution to existing and future problems provides an approach which can be subject to future review and ongoing adaptation to provide a strong basis for effective harm reduction approaches.
102. Professor Ryan states that, central to her consideration, is that a reputable operator such as the Applicant is well placed to support the implementation of these initiatives and other initiatives as they are agreed during the ongoing engagement. As a large operator in Darwin and elsewhere, there are significant reputational risks if good practices which support harm minimisation are not rigorously enforced. She expresses her confidence that good practice and adequate harm minimisation can be achieved through the operation of the proposed store and the Applicant's intended Engagement Strategy and mitigation measures.
103. In conclusion, Professor Ryan states that, in her overall assessment, the implementation of the agreed mitigation measures and the overall commitment to the Engagement Strategy will be best practice harm minimisation efforts which go beyond any other efforts that she is aware of in this field.

**Additional materials provided by NT Airports:**

104. By letter dated 27 November 2020, Mr Ross Baynes, the Executive General Manager Property and Terminal, NT Airports, provided additional materials to the Director on behalf of the Applicant and in its capacity as the corporation responsible for the management and development of the commercial precinct at the Darwin Airport.
105. The correspondence acknowledged that NT Airports is cognisant of the Commission's concerns in respect of the location of the proposed Dan Murphy's outlet at the corner of Osgood Drive and Bagot Road and has consulted with several community and indigenous groups in respect of their reservations regarding the original proposed site. The entities consulted were the Bagot Community, GDA and Danila Dilba. Mr Baynes states that the consultations identified that the major concern was the location of the proposed Dan Murphy's outlet at the Bagot Road site and the walkability to and from the Bagot Community.

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<sup>20</sup> The Alcohol Policies and Legislation Review Final Report, October 2017

106. Mr Baynes states that NT Airports discussed a number of alternate locations with the representatives of the three nearby Aboriginal communities and Danila Dilba, as well as with the Applicant, to arrive at a possible alternative location, the McMillans Road site.
107. Mr Baynes states that when presented with details of the alternate site those entities advised that they would either support the establishment of Dan Murphy's at the McMillans Road or not publicly oppose the establishment of Dan Murphy's at that site. Copies of correspondence received by NT Airports from the Bagot Community, GDA and Danila Dilba were annexed to Mr Baynes letters and are the same letters that were annexed to the further submissions of the Applicant.
108. The materials provided by NT Airports include a letter from Eton Fresh Markets, a prospective tenant of the commercial precinct in proximity to the proposed McMillans Road site. A copy of that letter is at Annexure E to this decision Notice.
109. Eton Fresh Markets is proposing the establishment of an air-conditioned market premises that would accommodate 40 to 50 tenants occupying 60 to 70 market stalls. The proponents state that with an average of two persons per tenancy the business is expected to result in 80 to 100 permanent jobs, excluding cleaners, security and centre management.
110. NT Airports also consulted with businesses already established and operating in close proximity to the McMillans Road site. That consultation resulted in letters of support from the following businesses:
  - Aussie Pooch Nutrition & Wellbeing located at 4/8 Osgood Drive, Eaton;
  - TEEG Australia Pty Ltd, the proprietor of Kingpin Family Entertainment Centre located at 1 Neale Street, Eaton;
  - Flipout Trampolining located at 1/11 Osgood Drive, Eaton; and
  - Little Flyers Darwin Childcare Pty Ltd, located at 10 Osgood Drive, Eaton.
111. Mr Baynes also advised that the Department of Infrastructure, Planning and Logistics has agreed in principle to the relocation of the proposed signalised intersection from the Osgood Drive and Bagot Road location to this McMillans Road site. He stated that any upgrade to this intersection will focus heavily on pedestrian safety.
112. Mr Baynes also submitted, on behalf of NT Airports, that Dan Murphy's would be the anchor tenant in the development of the commercial precinct, where total estimated to be in the order of a \$50 million development. He stated that without Dan Murphy's development the project is unlikely to move forward. Mr Baynes stated that the development will create over 160 jobs during construction, and support approximately 135 permanent jobs once the overall development is completed.
113. Mr Baynes submitted further that the developments at the Airport Precinct will be privately funded and, to date, every building in the Precinct has been constructed by locally based companies using local tradesmen. Mr Baynes also noted that this component of the development is the foundation for a much larger precinct which will attract investment in Darwin and the NT that could grow to almost \$150 million.

## **FURTHER SUBMISSIONS ON BEHALF OF FARE**

114. On 27 November 2020 the Director forwarded the further submissions of the Applicant to FARE and invited it to make any further submissions it wished to be taken into account by the Director in considering the revised application. A response was requested within 7 days, that is, by close of business on Friday 4 December 2020. On 3 December 2020 Ms Caterina Giorgi, CEO of FARE, sought an extension of time in which to lodge its submissions in response. The Director extended the time for lodging the submissions until close of business on Monday 7 December 2020.

115. In the covering letter attached to the further submissions FARE submitted that based on the information provided in its response, the application should be rejected and the store should not go ahead. FARE submitted that the Commission found the Applicant's original application to be unacceptable on multiple grounds and that the change of location does not address the significant and numerous risks identified by the Liquor Commission. Further, Police data of harms in a five kilometre radius around the Bagot Road site shows there are currently unacceptable levels of alcohol harm.
116. FARE identified five key grounds on which it says the proposed Dan Murphy's store should be rejected, namely:
- Moving the store one kilometre does not alleviate the significant alcohol harms identified by the Commission;
  - The new store location will cause additional harms, as it is closer to Rapid Creek, a known area for long grassers and also near venues frequented by children and young people.
  - There is strong Territory and national opposition to the store, including from Aboriginal and Torres Strait Islander and community organisations and leaders.
  - Woolworths' mitigation measures will not alleviate alcohol harms identified by the Liquor Commission, and by opponents to the store.
  - There is critical information missing from Woolworths' application.
117. Annexed to the submissions from FARE were five expert statements as well as correspondence from a number of organisations opposed to the application.
118. FARE submitted that the NT has Australia's highest proportion of deaths and hospitalisations attributable to alcohol and that whilst the level of per capita consumption of alcohol in the NT had decreased by 14% over the past seven years consumption is still the highest in Australia. It was further submitted that alcohol harms near the proposed location are significant, and in some cases and that alcohol-related assaults increased by 5.8% in Darwin and 11.9% in Palmerston over the two year period to June 2020.
119. Fare summarised the grounds on which the Commission rejected the original application as follows:
- the Commission was not satisfied that the benefits from the grant of the application outweighed the potential for a significant increase in harm due to the use of liquor over and above that already occurring within the community area;
  - the application would lead to a massive increase in the density of packaged liquor outlets in both the 2 km and 5 km zones as well as in the 25 km trade zone;
  - the Commission considered that such a massive increase in density as is proposed will lead to an increase in consumption by problem drinkers and subsequently to an increase in the level of alcohol-related harm; and
  - the misuse of alcohol is not confined to indigenous Territorians and 24.9% of the non-indigenous adult population is at risk of long term harm through excessive alcohol consumption.
120. FARE submitted that the Dan Murphy's business model of low prices, aggressive traditional and digital marketing, extensive range and focus on online sales will all contribute to an increase in the volume of alcohol in Darwin, particularly amongst residents who are at most risk. Further, the proposed store will undermine the NT'S comprehensive alcohol reform program which has contributed to significant reductions in alcohol harm.
121. In FARE's view moving the proposed store one kilometre will not alleviate the significant alcohol harms and increase in outlet density identified by the Commission in the area surrounding the Bagot Road site and the new site remains within the 2km radius and 5km radius around the

original site. The submissions also refer to research which indicates that an increase in liquor outlet density leads to increased harm.

122. FARE's further submissions refer to Police data showing extremely high alcohol related crimes in the 5 km radius around the Bagot Road site and this had increased over recent years. FARE submits the data shows a consistent increase in the level of alcohol related offending in that community area between 1 April 2016 and 31 March 2019.
123. FARE submits that the proposed location of the store remains within walking distance of three dry Aboriginal communities and that residents of Kulaluk, Minmarama and Bagot Aboriginal communities now walk to Nightcliff BWS to purchase alcohol, an outlet further from those communities than the McMillans Road site.
124. FARE states that the Dan Murphy's brand is built on offering the lowest alcohol prices and that knowledge is deeply entrenched and has been further reinforced in Darwin after years of coverage of the Dan Murphy's story. In that regard FARE refers to the evidence before the Commission of Ms Helen Secretary, Chairperson of the GDA who acknowledged that people in her community did consume alcohol, despite the fact the community is dry, and that those people would purchase liquor from Dan Murphy's if the prices were cheaper than elsewhere.
125. In respect of the Applicant's commitment to not advertise its "lowest liquor price guarantee" FARE submits this will have little impact as the Dan Murphy's brand is built on offering the lowest alcohol prices and that knowledge is deeply entrenched.
126. FARE's submissions refer to a recent report prepared by the Productivity Commission titled "Overcoming Indigenous Disadvantage: Key Indicators 2020", published on 3 December 2020, which investigates Aboriginal disadvantage and the role alcohol plays in poor health outcomes. FARE notes the report's findings that to address the serious outcomes measures need to be taken to restricting access to alcohol and inhibit the appeal of alcohol.
127. FARE submits that the new site proposed for the Dan Murphy's outlet will reduce liquor prices in Darwin resulting in increasing consumption and alcohol harm. FARE notes that Dan Murphy's has 241 outlets Australia wide and sells more alcohol than any other packaged liquor business in Australia. FARE submits that international evidence shows that lower prices lead to higher consumption levels.
128. FARE also refers to the finding of the Riley Review that the people who drink the most alcohol and are most impacted by alcohol harm disproportionately depend on the cheapest alcohol. It also notes that young people are also particularly sensitive to the price of alcohol.
129. In terms of cheaper prices for beer products, FARE refers to the Commission's finding that the impact of lower priced beer would be particularly notable and harmful allowing for the size of area on which beer would be displayed in the proposed Dan Murphy's outlet and the demonstrated capacity for the Applicant to offer beer at prices lower than are currently available. In that finding the Commission acknowledged the benefits that would flow to responsible consumers from lower price through increased competition but noted that those benefits need to be weighed against the harms that might be visited upon the community through the irresponsible consumption of liquor.
130. FARE submits that the Applicants proposal to place a MSP on beer, higher than the minimum sales price mandated by the Act, is effectively an empty gesture when the Dan Murphy's brand will lower the price of beer by \$20 per carton.

#### **FARE's Response to Economic Benefits Claimed by the Applicant:**

131. In respect of the economic benefits claimed by the Applicant in its submissions, FARE states that the Commission largely dismissed those claims and refers specifically to the following finding:

"Although it is accepted there would be an estimated 80 constructions jobs created during the building of the proposed store; the claimed additional 129 related jobs in the broader

community are based on generalized assumptions and include both full and part-time workers for only one year. Given the estimated capital costs of the building will amount to \$11.5M of the estimated total cost of \$15M; it is likely that a substantial amount of these monies will be spent on sourcing material from outside the Northern Territory”.

132. Also in respect of economic benefit, FARE notes the evidence presented to the Commission by Mr Paul Tisato from the Liquor Wholesaler ALM who stated that the proportion of total sales going through a large format liquor outlet will increase resulting in a significantly lower staff to sales ratio than for smaller location stores.

#### **On-Line Sales**

133. FARE submits that Dan Murphy's focus on online liquor sales is likely to result in increased consumption and alcohol harm. The submissions also refers to research indicating that many younger drinkers consume more alcohol when using online and rapid delivery. FARE submits further that online sales and home delivery present a risk for young people due to generally poor regulation across Australia and a widespread practice of unattended deliveries.
134. FARE acknowledges that ID checks at point of delivery are required in the NT and unattended deliveries are not permitted but notes that there is no requirement for customers to prove their age at point of sale online and indications are that customers are not always asked to provide identification at point of delivery.

#### **Big Box Stores are Harmful**

135. FARE submits that packaged liquor chain outlets cause greater harms than other outlets and notes that currently Darwin does not have a destination big box liquor store. FARE submits that the Commission found numerous reasons to reject the Applicant's substitution application, many based on the location's proximity to people at risk of harm and that proximity remains despite the proposed new location. FARE also submits that the new location is in an area of unacceptably high alcohol related harms.

#### **Proposed new location:**

136. FARE submits that the new proposed location is near areas frequented by Darwin's long grass community. FARE states that many of the people who drink in public in Darwin do so because they are visitors to Darwin and they are often from dry communities. FARE notes that those people often arrive and depart by air and set up camp in bushland close to the airport. FARE submits that the new Dan Murphy's location will be easily walkable from these camps and will therefore increase alcohol harm amongst this cohort.
137. FARE also notes that the new location for the Dan Murphy's outlet is next to a family entertainment precinct containing businesses popular with both children and adolescents as well as other proximate venues and sporting facilities frequented by children.
138. In its submissions FARE states there is strong Territory and national opposition to the store, including from many Aboriginal and Torres Strait Islander and community organisations and leaders. FARE refers to some 46 organisations and individuals who FARE says are opposed to the development of the proposed Dan Murphy's store.
139. Annexed to FARE's written submissions was correspondence from the Danila Dilba and the Aboriginal Medical Services Alliance Northern Territory (AMSANT) expressing their opposition to the Dan Murphy's proposal:
- Danila Dilba and AMSANT letter of objection to Woolworths Group;
  - Danila Dilba letter of objection Woolworths Group;
  - Danila Dilba letter of objection to Chief Minister re law change;
  - Danila Dilba letter of objection to Paul Kirby, Minister for Small Business;
  - Danila Dilba letter of objection to Members of the NT Legislative Assembly;

- Danila Dilba letter of objection to Tony Edmondstone, NT Airports; and
- Open letter to the Woolworths Board by community organisations

140. Copies of the correspondence is contained in Annexure F to this Decision Notice. It is clear from that correspondence that Danila Dilba opposes the establishment of Dan Murphy's outlet in Darwin and has publicly expressed that view on a number of occasions. It is also clear that Danila Dilba and AMSANT are opposed to the recent amendments to the 2019 Act that provide for the expedited determination of the within application.

**Response to the Applicant's Proposed Mitigation Strategies:**

141. FARE submits that the mitigation measures proposed by the Applicant in its further submissions will not alleviate alcohol harms identified by the Liquor Commission and by opponents to the Dan Murphy's store. FARE refers to the statement of Dr Alison Ziller<sup>21</sup> and her opinion that for mitigations to be effective, they must be tangible, deliverable and durably effective. Having reviewed the Applicant's proposed additional mitigation measures Dr Ziller observes: *"These mitigations are largely intangible, and characterised by such phrases as 'willing to discuss' and 'seek to communicate'. Worthy as these intentions may be they are not tangibly expressed ..... all the applicant has to do is to be 'willing' or to 'seek' and they can say the mitigation can be said to have been done."*
142. In respect of the Applicant's proposed implementation of its own MSP initiative, Dr Ziller opines that this is most tangible of the mitigation strategies proposed however she notes that this is a voluntary measure and the Applicant could to no longer apply the higher MSP if it chose to do so, or apply it to some products only at certain times. Dr Ziller states further that any effort to enforce this measure, for example, as a condition on their licence, would create a situation where Licensing NT would be applying different prices for different products among different retailers and that any such condition could be challenged on the basis of competition law.
143. In a statement attached to FARE's further submissions Dr Peter Miller<sup>22</sup> states that it is unclear how many products may be subject to that proposed MSP pricing. Professor Miller says alcohol harms will flow from Dan Murphy's entire range, noting that the Dan Murphy's business model is about attracting to people to buy in bulk.
144. It was further submitted that the Commission downplayed the relevance of the MSP in its consideration of this application on the basis that it, along with the banned drinker register, could not be regarded as "the 'silver bullet' in the battle to change harmful drinking practices.
145. FARE submits that, even taking into account the "few cents" that Applicant says it will add to alcohol prices, the new big box store will put significant downward pressure on prices across the board and that lower prices will lead to increased harms.
146. In respect of the implementation and enforcement of RSA policies and procedures, Professor Miller says he has found these measures to be ineffective, or worse, actually increase alcohol use.
147. FARE submits that it is critical to note that RSA practices only apply in store or at the point of sale and do not mitigate against harms that occur after consuming the product away from the store. FARE also notes that RSA standards were broken by several packaged liquor outlets, including those owned by Woolworths, in Western Australia.
148. FARE submits that the Applicant's claims of premiumisation and focusing on high end wine in both its original and revised application is not supported by any evidence. FARE notes the finding of the Commission that the Dan Murphy's store layout demonstrates that the size and layout of the store *"has been influenced by the much higher demand for standard beer products in*

<sup>21</sup> Dr Ziller is a lecturer in Social Impact Assessment in the Discipline of Geography and Planning, Macquarie School of Social Sciences, Macquarie University

<sup>22</sup> Professor Miller is the Professor of Violence and Addiction Studies, Faculty of Health, School of Psychology, Deakin University

*Darwin than elsewhere in Australia and that the Applicant is hoping to capture a significant proportion of that market with the lower prices it is able to offer”.*

149. In respect of the traffic measures proposed at the McMillans Road site, FARE refers to the evidence before the Commission of Helen Secretary, Chairperson of the GDA who referred to the ineffectiveness of pedestrian walkways and other traffic upgrades suggested for the Bagot Road Osgood Road intersection in the application in respect of the original proposed location. In Ms Secretary's view her countrymen would not use pedestrian crossings. FARE submits those concerns are relevant to McMillans site.
150. FARE states that the Engagement Strategy proposed by the Applicant will not be effective in mitigating against alcohol related harms due to the current levels of antipathy and mistrust directed towards the proposed store by the relevant Indigenous Communities. FARE notes that the Applicant does not have agreement from the Bagot Community or the Danila Dilba Health Service to be involved in the Strategy.
151. FARE refers to the Commission's findings regarding the Applicant's consultation with the local indigenous communities. The Commission was critical of the fact that the only made contact with those communities well after the matter had been referred to the Commission and after it had committed to the Bagot Road site. The Commission stated that had the Applicant had been hoping for a meaningful dialogue with those communities it should have sought their views prior to deciding to locate the site in such close proximity to the communities.
152. FARE states that the Applicant has deliberately misrepresented the views of two of its primary stakeholders, being Bagot Community elder Helen Fejo-Frith and CEO of Danila Dilba Olga Havnen who say that they do not support the new location. FARE states that Ms Fejo-Frith and Ms Havnen advised that if there was a change of location they would not object, but only on the understanding the revised application would be subject to a full consideration under the Liquor Act.
153. FARE submits that there is critical information missing from application in that the Applicant gives no detail about the volume of alcohol it will sell. FARE submits that volume of alcohol sales is a key determinant of density and yet the Applicant refers to the net value of liquor sales when discussing the likely impact of its store. FARE submits this is not a relevant measure when considering harms and that the 2019 Act 2019 identifies outlet density and the volume of alcohol sales as determinants of harms.
154. FARE submits that the Applicant asserts that a Dan Murphy's outlet could derive market share without increasing the overall level of alcohol in the community based on the rationale that people will buy the same amount of alcohol but it will be Dan Murphy's higher-end products and so cost more. FARE submits there is no evidence that this will be the case in Darwin.

### **Expert Reports:**

155. FARE's further submission included six expert reports which are summarised as follows:

Dr Michael Livingston<sup>23</sup>:

156. Dr Livingston prepared a report dated 2 December 2020 prepared on instructions from FARE. Dr Livingston prepared an affidavit for the purposes of the hearing before the Commission and states that remains relevant to the revised application. He states that the key change is the alternative location of the proposed store, one kilometre from the previous location.
157. Dr Livingston states that a key consideration in the current hearing seems to be whether the proposed substitution of a previous packaged outlet will lead to increases in alcohol sales and notes there is little specific research evidence that can be relied on to address this question. He notes also that in previous applications, the Applicant has readily acknowledged that the larger outlets like Dan Murphy's will sell more alcohol than smaller outlets.

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<sup>23</sup> Dr Livingston is a Senior Research Fellow at La Trove University

158. Dr Livingston acknowledges that the evidence base has some shortcomings, especially in terms of scientific studies relating to the impact of big box outlets compared to other packaged outlets, the general picture from the scientific literature suggests that the addition of this Dan Murphy's store to Darwin will increase alcohol-related harms. In Dr Livingston's opinion, given the exceedingly high rates of alcohol consumption and related harms in the NT and even in light of recent positive developments attributable to evidence-based policy interventions, a precautionary approach would suggest that this application be refused.

Professor Peter Miller:

159. Professor Miller prepared a report dated 3 December 2020 in respect of the amended application in which he reiterates the key points from his affidavit filed in the proceeding before the Commission.

160. In respect of the mitigation measures proposed by the Applicant in its further submissions, Professor Miller states that his research and experience has shown that RSA policies and procedures have been found ineffective, or worse, actually increase use. He notes that poster materials promoting responsible drinking were associated with increased consumption amongst undergraduate students, suggesting that poster campaigns to reduce alcohol harms may be having the opposite effect to that intended. In addition, Professor Miller states that evidence from overseas that showed that while RSA training improved knowledge and attitudes among staff, there was little actual change in their behaviour. Further, RSA is only one factor in assessing whether a packaged liquor licence will contribute to levels of alcohol harm as alcohol purchased from a packaged liquor outlet is consumed off premises, in uncontrolled environments, and therefore contributes to harm in environments where the licensee has no control.

161. Professor Miller states that his research on underage purchasing of alcohol from packaged liquor outlets in Australia found that the majority of outlets examined breach regulations prohibiting the sale of alcohol to underage youth. He also stated his analysis had found that in Queensland and Western Australia, the probability of underage persons being sold alcohol was greater with chain stores compared with independent stores.

162. Professor Miller refers to the Applicant's suggestion that that with a MSP in place, there is no need to be concerned about low prices impacting consumption. He notes that this suggestion denies the reality that the MSP affects a minority of the products sold by Dan Murphy's but the lowest price guarantee applies to all products and their business model is about attracting people to buy larger quantities of alcohol from their stores.

Assistant Professor Christopher N. Morrison, PhD:<sup>24</sup>

163. Assistant Professor Morrison submitted an affidavit to the Commission dated 3 June 2019 and gave evidence at a hearing before the Commission on 7 June 2019. He states that he is aware of the amendment to the application, moving the proposed site of the new Dan Murphy's store to a location on McMillans Road, one km away from the originally proposed Bagot Road site.

164. Assistant Professor Morrison states that the minor amendment does not affect the evidence he presented in his affidavit or during the hearing. In his opinion a one km difference in store sites is unlikely to produce different changes in access to alcohol, alcohol consumption, and alcohol-related harm for nearby residents and that the new McMillans Rd site is likely to contribute to alcohol-related harm for the reasons detailed in his previous evidence.

Professor Peter Phibbs<sup>25</sup>:

165. Professor Phibbs refers to the economic impact of the proposed Dan Murphy's outlet and the claim by the Applicant that the development would inject \$15 million into the economy and

<sup>24</sup> Dr Morrison is an Associate Professor with the Epidemiology Faculty of the Mulman School of Public Health, Columbia University

<sup>25</sup> Professor Phibbs is an Urban Planner engaged with the University of Sydney

create 129 to 140 jobs over the course of the construction works, together with 40 permanent jobs once the outlet is trading. `

166. Professor Phibbs queries how long the jobs will be for and states they will not entail full time jobs. He states that many of the claimed employees would be subcontractors who would spend a short time on the project. In Professor Phibb's opinion the main issue is the estimate of the total permanent jobs full and part time. In his opinion, if Dan Murphy's grows its sales by taking trade from existing stores it is likely that the total alcohol retailing employment impact of Dan Murphy's will lead to a loss of alcohol retailing jobs in Darwin as the larger format Dan Murphy's will be less labour intensive than the smaller format stores it takes trade from.

Dr Alison Ziller:

167. In Dr Ziller's opinion moving the proposed Dan Murphy's site to a location one km away will not make any difference to the customer catchment. She notes that the total trade area for the proposed liquor outlet comprises a 25km radius from the site, while the primary trade area is estimated as 5 km from the site where most customers live.
168. Dr Ziller notes that the Aboriginal communities of concern are still proximate to the McMillans Road site and states that in terms of proximity to Aboriginal communities, this site is not an improved location. She states that Aboriginal people, and non-Aboriginal people with a drinking problem, and who have to walk to purchase alcohol, are unlikely to be deterred by an extra one kilometre.
169. Dr Ziller notes Professor Ryan's observations that the three Aboriginal communities in proximity face difficulties managing the harmful level of drinking among some of their residents. In Dr Ziller's opinion, and contrary to the views of Professor Ryan, it unlikely that the mitigation actions proposed by the Applicant are likely to be effective. Dr Ziller states that the fact that two organisations have decided not to object and one has written a letter of support does not mean that approving this Dan Murphy's would be in the public interest.
170. Dr Ziller states further that the competitors of Dan Murphy's will compete, including on price, notwithstanding the MSP. She is also of the opinion that the mitigation strategies proposed by the Applicant are inadequate as they are largely intangible and, in some instances, vague as to the commitment of the Applicant and the likelihood of success. For example, whilst the Application refers to potential employment opportunities for Aboriginal people there is no attempt to say how many jobs will be provided. Dr Ziller also states that there appear to be no mitigations directed to risky drinkers in the non-Aboriginal population.

Professor James Smith<sup>26</sup>:

171. Professor Smith swore an affidavit that was considered by the Commission during its hearing and states that the majority of the concerns raised in that affidavit remain the same and the prospect of the establishment of a Dan Murphy's outlet remains problematic from a public health perspective. He states that the establishment of a 'big barn liquor' outlet will increase the costs and harms associated with alcohol consumption.
172. In Professor Smith's opinion, the risk mitigation strategies proposed by the Applicant, alongside the Social Impact report prepared by Professor Roberta Ryan, provide insufficient evidence that these risks will be reduced. Indeed, there are new community health and safety risks that have not been considered.
173. Professor Smith reiterates the concerns expressed previously regarding the proximity of the original location to three local Aboriginal communities and notes that while the McMillans Road site is slightly further away it is still reasonably accessible via pedestrian access to each of these communities. He also notes that the new location is in proximity to a "Family precinct" which increases public health risks for children and youth. Professor Smith also notes that the new

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<sup>26</sup> Professor Smith is a Father Frank Flynn Fellow (Harm Minimisation); Head of the Alcohol, Other Drugs and Gambling Program; and Director of the Freemasons Centre for Male Health and Wellbeing-NT, Menzies School of Health Research

proposed location remains in proximity to the Mental Illness Fellowship NT located on Bagot Road and arguably closer to documented long-grassing in the suburbs of Eaton and Rapid Creek.

174. Professor Smith notes that it is unclear whether the new proposed intersection will have pedestrian traffic lights and expresses his concerns about intoxicated pedestrians walking across McMillan's Road close to a licensed tavern and the likelihood of an increase in pedestrian-related road trauma.
175. In summary, Professor Smith states that the public health risks, and associated costs and harms of establishing a Dan Murphy's in Darwin, far exceed the purported economic benefit to be accrued by the NT community and that both locations proposed by the Applicant have different, but equally significant risks. He concludes by stating that the risks and harms of alcohol to the NT community would be best mitigated by not establishing a Dan Murphy's outlet at all.

## CONSIDERATIONS

176. In considering the revised application the Director, like the Commission, is obliged to consider the purposes prescribed in section 3 of the Act, namely:

### 3 Purposes

- (1) *The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.*
- (2) *The secondary purposes of this Act are:*
- (a) *to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor;*
  - (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.*

177. In its Decision Notice the Commission refused to approve the substitution of the Stuart Park BWS liquor licence to the Bagot Road site proposed by the Applicant. It is apparent from the Decision Notice that one of the primary concerns of the Commission was the location of the Bagot Road site to the three identified Aboriginal Communities. That fact is acknowledged by both the Applicant and FARE in their further submissions provided to the Director.
178. As noted above, Ms Helen Fejo-Frith, Bagot Community Elder, and Ms Helen Secretary, Chairperson of the GDA, attended and gave evidence at the hearing convened by the Commission and expressed their significant concerns about the impact of the proposed Dan Murphy's outlet and the potential for the proposal to impact negatively on the health and well-being of the residents of their respective communities. Those concerns related to a significant degree on the proximity of the Bagot Road site to their communities and the fact the site is located on one of the busiest arterial roads in Darwin, being a major access road from the Northern Suburbs to the Darwin CBD. Those concerns were, in my opinion, highly persuasive and a major factor in the Commission's decision to refuse the application.
179. In concluding its considerations the Commission made the following observations that are particularly relevant to the considerations in respect of the Applicant's revised application:
357. *That the Commission has arrived at this decision may not be surprising to some given the findings of the Riley Review which declared that there were already too many packaged liquor outlets in the Territory and recommended a moratorium on any new licences. However, as we*

*have found that the moratorium does not apply to this application, we have dealt with it on its merits, in accordance with the law and on the evidence before us.*

358. *It is most unfortunate that the Applicant did not engage in consulting the local community prior to committing to this site because it would, in our view, have come to the realisation that this was not an appropriate position for any liquor store, let alone one the size of Dan Murphy's.*

359. *Having now heard all the evidence and considered the detailed and thoughtful submissions of the Applicant, the Commission wishes to make clear that it is not opposed to the concept of a Dan Murphy's store in Darwin. However, this is provided that the limitations associated with a substitution application, adverted to in paragraphs 131-133, can be addressed, an appropriate site can be identified and provided that the density impact can be reduced. (Emphasis added).*

180. In my view, the above statements of the Commission would have raised a reasonable expectation on part of the Applicant that, were it to address the matters raised by the Commission in paragraphs 358 and 359 of the Decision Notice, there was at least the prospect the Commission would reconsider, and perhaps approve, a revised application. Following the refusal of the substitution application the Applicant sought 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 identifying an alternative site and addressing the other matters of concern to the Commission.

181. However, even had the applicant addressed the concerns raised by the representatives of the three Aboriginal communities in a fresh application it is highly probable that many of the original objectors would have again lodged objections resulting in a further protracted hearing before the Commission. That is particularly so in the case of FARE who has made it clear in its original objection, and also in its submissions in response to the revised application, that it is opposed to the establishment of a Dan Murphy's outlet, which it describes as a "big box outlet", in Darwin in any location or under any circumstances.

182. Similarly, a number of the experts commissioned by FARE to respond to the revised application have expressly stated that there should not be a Dan Murphy's outlet in Darwin in any location or under any circumstances.

Revised Application:

183. The recent amendments to the 2019 Act are specific and clearly provide for the submission of further information from an Applicant in respect of substitution applications that fall within the parameters of section 334 with the aim of expediting the consideration of a revised application. The Applicant has taken the opportunity provided to it by that section and sought a determination of the revised application by the Director in an expedited manner.

184. It is of significance that the Commission, having carefully and exhaustively considered the public interest and community impact test, stated that it was not opposed the concept of a Dan Murphy's outlet in Darwin per se, subject to the provisos set out in paragraph 359 of the Decision Notice that:

- The matters addressed in paragraphs 131 – 133 of the Decision Notice can be addressed;
- That an appropriate site can be identified; and
- That the density impact can be reduced.

As set out above, the first bullet point in now redundant.

#### **Approval of Substitution Application Subject to Conditions:**

185. Paragraphs 131 to 133 of the Commission's Decision Notice relate to an issue raised by the Commission itself. Namely, whether section 46A of the 1978 Act authorised the Commission

to approve a substitution of licensed premises subject to conditions. The Commission did not make a determination in that regard.

186. However, there is no longer any requirement to consider that issue. As noted in paragraph 17 above, the Liquor Act Amendment Bill 2020 was passed on 26 March 2020 and specifically amended the section 75 of the 2019 Act to provide that the Commission could approve a substitution application subject to conditions.
187. In addition, section 334 of the 2019 Act as amended by the recent Liquor Further Amendment Bill 2020 specifically provides, at section 334(6)(b), that in approving a substitution application the Director has the power *"to impose or vary conditions on the approval or on any licence, licenced premises or authority related to the application"*.

### **Consultation with nearby Aboriginal Communities:**

188. In paragraph 358 of its Decision Notice the Commission was critical of the Applicant for its lack of consultation with the residents of the three identified Aboriginal communities prior to selecting the Bagot Road site for the location of the proposed Dan Murphy's outlet. Since the Commission's refusal of the substitution application there can be no doubt that the Applicant has consulted the three communities, and Danila Dilba, in respect of the McMillans Road site and in respect of the additional mitigation strategies proposed to be implemented.
189. As noted in above, in its revised application the Applicant has provided the Director with correspondence received from representatives of the Bagot Community, GDA and Danila Dilba. That correspondence is in response to consultation in respect of the proposed McMillans Road site for the Dan Murphy's outlet with the Applicant and NT Airports.
190. Annexure A is a letter dated 14 September 2020 from Ms Helen Fejo-Frith, Bagot Community Elder, addressed to the Director Property and Operations NT Airports. In her letter Ms Fejo-Frith states, amongst other matters:

*"I confirm that the Bagot Community would not object to a Dan Murphy's store being introduced to Darwin, if the store relocates from the original site on Bagot Road to a new location at McMillans Road opposite Sabine Road, as shown on the attached location plans."*  
(Emphasis added).

191. It must be acknowledged that, according to recent media reports, Ms Fejo-Frith has changed her mind in respect of the application and now objects to the opening of a Dan Murphy's outlet anywhere in the Darwin, or the NT for that matter. Following is an extract from the NT News article dated 22 November 2020 including comments attributed to Ms Fejo-Frith:

*Bagot Community elder Helen Fejo-Frith has again changed her position on the Dan Murphy's proposal, now opposing the airport development. Ms Fejo-Frith told the ABC she regretted signing a letter to Dan Murphy's where she withdrew her opposition after Dan Murphy's relocated the proposed site, moving a further 1.3 km away from Indigenous communities. We don't want another (alcohol) outlet here, we've got enough as it is," she told the ABC. "The message is as strong as I can put it." "For Bagot Road, we didn't want it on there because we've seen so many people getting hit and deaths on that road and because of the alcohol," Ms Fejo-Frith said.*

192. In normal circumstances the signed letter from Ms Fejo-Frith in her capacity as a representative of the Bagot Community would be attributed significantly more weight than a verbal statement to the media. However, in this case the media article post-dates the letter and it is not clear in the media article whether Ms Fejo-Frith is objecting to the establishment of a Dan Murphy's outlet at the McMillans Road site in her personal capacity or as a representative of the Bagot Community. Given the completely opposite views expressed by Ms Fejo-Frith it is difficult to determine how much weight should be given to either of the contrary statements.
193. Annexure B is a letter dated 25 September 2020 from Ms Helen Secretary, Chairperson of the GDA, the organisation responsible for the management of the Kulaluk and Minmarama

Aboriginal communities. The letter, addressed to whom it may concern, states amongst other matters:

*"NOT ONE of any of those saying no to Dan Murphy's based on the proximity to Bagot, Kulaluk and Minmarama, have thought to contact Helen or consult with any of the people that live in these communities."*

*"Once again Helen would like to reiterate that she and a vast majority of the residents of Kulaluk and Minmarama would like to see the Dan Murphy's development go ahead, irrespective of the location, because for the first time they might get something done about pedestrian safety along Bagot and other roads." (Emphasis added).*

194. To the best of the Director's knowledge Ms Secretary has not changed her position as set out in her letter, either by further correspondence to the Applicant or in any media or public forum. Of particular significance is the fact that she states categorically, on behalf of the residents of her communities, that her community supports the establishment of a Dan Murphy's outlet at the McMillans Road site having previously opposed the proposal; for the Bagot Road site. As noted above, the opposition of Ms Secretary and Ms Fejo-Firth was, in my opinion, highly persuasive and a major factor in the Commission's decision to refuse the initial application as it related to the Bagot Road site.
195. Annexure C is a letter dated 14 September 2020 from Ms Olga Havnen, Chief Executive Officer of Danila Dilba, addressed to the Director Property and Operations NT Airports. In her letter Ms Havnen sets out her concerns in respect of the public health impacts of a "big box" liquor outlet in the Northern Suburbs given the existing high levels of alcohol related harm in the area and across the NT. In her letter Ms Havnen states:
- "On the basis of the Liquor Commission analysis of likely harms and the advice of our own experts, I confirm that Danila Dilba Health Service would not formally or publicly object to an alternative location as discussed on McMillians Road opposite Sabine Road as shown on the attached location plans. On the other hand, Danila Dilba will not support the support the proposal either but will remain neutral." (Emphasis added).*
- "I also emphasise that this does not mean that Danila Dilba will refrain from speaking or taking a position on any broader issues related to alcohol related harm, harm reduction or any matter relating to alcohol policy in the NT or to any failures in relation to harm minimisation and compliance with relevant laws and regulations by Dan Murphy's should it proceed or any other liquor outlet. Nothing in this letter prevents Danila Dilba from speaking up about any such issues should they arise."*
196. Since the date of her letter, Ms Havnen, on behalf of Danila Dilba, has publicly objected to the establishment of a Dan Murphy's outlet on a number of occasions, as evidenced by the correspondence provided to the Director by FARE and contained in Annexure G to this Decision Notice. It is clear from that correspondence that Danila Dilba opposes the establishment of a Dan Murphy's outlet anywhere in Darwin and that view has been expressed publicly on a number of occasions, contrary to what Ms Havnen said in her letter to NT Airports.
197. It is also clear that Danila Dilba and AMSANT are opposed to the recent amendments to the 2019 Act that provide for the expedited determination of the within application by the Director. That is a matter for those organisations and, of course, they are entitled to express their views in that regard. However, the amendments have been enacted and are now law and it is open to the Applicant to seek to have its revised application determined and the Director is required by the amended legislation to determine the revised application in an expedited manner.
198. The Applicant, in the further materials provided to the Director, acknowledges appropriately that since providing the letters to Airports NT stating that the Bagot Community and Danila Dilba will not oppose the development at the McMillans Road site representatives of both organisations have publicly stated that they do not support a Dan Murphy's at any location in Darwin.

199. It is apparent that the Applicant has made significant efforts to consult with representatives of the three Aboriginal Communities in proximity to the new proposed McMillans Road site. The Applicant in fact received confirmation of support for the proposal from Ms Secretary on behalf of the Kulaluk and Minmarama Communities. Despite the assurances from the Bagot Community and Danila Dilba that those organisations would not formally or publicly oppose a Dan Murphy's outlet at the McMillans Road site the opposite has occurred.
200. Despite the fact that Danila Dilba and Ms Fejo-Frith (and perhaps the resident of the Bagot Community), are opposed to the establishment of a Dan Murphy's outlet in any location it cannot now be said that the Applicant has failed to consult Danila Dilba and the Bagot Community, albeit the consultation has not resulted in an agreed position.
201. The Commission's criticism was aimed at the Applicant's failure to consult the Aboriginal communities about the Bagot Road site, not the fact that the consultation may not have resulted in the consensus the Applicant may have hoped to achieve. Given the matters set out immediately above, I am satisfied that the Applicant has addressed the deficiency in respect of consultation identified by the Commission in paragraph 358 of its decision notice and has made significant efforts to consult the Aboriginal stakeholders in respect of the proposed McMillans Road site. It is apparent, from FATE's submissions, that Danila Dilba and Ms Fejo-Frith are not prepared to engage in any further consultation with the Applicant.

#### **Suitability of the Proposed New Location:**

202. As set out above, the Commission stated in its Decision Notice that it was not opposed to the concept of a Dan Murphy's outlet but found that the proposed Bagot Road site was inappropriate due to the proximity to the three Aboriginal communities. The Applicant has responded to that finding by identifying an alternative site, the McMillans Road site.
203. It is acknowledged that the new site is 1.3 kilometres by road from the previous site and is still within the commercial precinct of the Darwin Airport. However, it is an alternative site to that originally proposed on Bagot Road. The question is whether the McMillans Road site is an "appropriate site" as identified by the Commission in paragraph 359 of the Decision Notice.
204. Both Ms Fejo-Firth and Ms Secretary raised concerns regarding the Bagot Road site and the potential for further road trauma and death caused by people from their communities crossing Bagot Road to access the proposed Dan Murphy's outlet. Ms Secretary's support for the McMillan Road site is a clear indication that the re-location of the proposed site has ameliorated the concerns of her communities in regard to the originally proposed Bagot Road site.
205. In respect of the Applicant's previous proposal to upgrade the intersection at Bagot Road and Osgood Road, including the installation of pedestrian crossings, Ms Fejo-Firth was firm in her position that some residents of the Bagot Community would not use the pedestrian crossings even were they to be installed. That same argument could equally be applied to the McMillans Road site where the Applicant again says it will contribute to the upgrade of the intersection of Sabine Road and McMillans Road. Having said that, the same situation arises at numerous locations across the Greater Darwin area where people, including Aboriginal people, cross roads in a dangerous manner including in breach of traffic laws.
206. The dangers in that type of behaviour are escalated when the people engaging in that risky behaviour are intoxicated. That situation arises at numerous locations as evidenced by anyone who drives in the greater Darwin area. That type of behaviour is not limited to roads in proximity to licensed premises and takeaway liquor outlets and applies equally to busy roads at numerous locations throughout the Darwin area, including roads in proximity to fast food outlets for example. That type of behaviour is a notorious fact recognised by anyone who drives regularly on Darwin roads.
207. The Commission stated in its Decision Notice that the nature of the upgrades proposed for the Bagot Road and Osgood Road intersection are not matters on which the Director has the

expertise to advise or comment<sup>27</sup>. Similarly, the Director does not have that expertise. However, the Applicant has indicated previously that any road and intersection improvements, including the installation of pedestrian crossings, would be undertaken in consultation with the appropriate authority being the Department of Infrastructure, Planning and Logistics (**DIPL**), the agency responsible for road safety.

208. I assume, as did the Commission, that any upgrade to the intersection of McMillans Road and Sabine Road will be undertaken in accordance with the advice and directions from DIPL which will address pedestrian and motorist safety to the applicable safety standards.
209. FARE also submits that the McMillans Road site will cause additional harms as it is closer to Rapid Creek, a known area for "long grassers". It is well known by Police, and the wider Darwin community, that itinerants and people visiting Darwin from remote communities set up camps and drink in the bushland areas surrounding the Darwin Airport, including in areas surrounding the proposed McMillan's Road site. It also well known to anyone that has lived in Darwin for a reasonable period of time that these types of bush camps are prevalent throughout the Greater Darwin area extending to Palmerston and beyond.
210. The Commission also heard evidence from representatives of the three Aboriginal Communities regarding "long grass campers" in proximity to the Bagot Road site and noted that there are limited at risk groups or other residents within the 800 metre radius because the site is situated in a light industrial area<sup>28</sup>. In response to the Applicant's proposal to engage roaming security patrols to monitor and move on the long grassers as a risk minimisation strategy, the Commission noted that many of the residents of the nearby suburbs, including Bagot Community, would prefer they stayed in the long grass rather than bring their drinking and anti-social behaviour into a more residential environment.
211. There is however an alternative means by which the opportunity to the long grassers to purchase liquor from the proposed Dan Murphy's outlet could be minimised to a significant degree.
212. During the COVID-19 pandemic the Director 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 in the area where the liquor is purchased. That measure was initially imposed on all takeaway liquor outlets in the NT on 28 March 2020 at the outset of the pandemic and ceased on 26 June 2020 when the social distancing protocols were relaxed in the NT.
213. The measure was re-introduced by the Director on 10 September 2020, at the request of Police, for all takeaway liquor licensees conducting business in the Greater Darwin region, including Palmerston and extending south to Pine Creek.
214. Police have advised informally that the measure is effective and is having a positive effect in reducing alcohol related harm and particularly grog-running into dry communities. The Director's emergency powers will cease when the COVID health emergency ends and the emergency licence conditions will lapse. Given the apparent positive results arising from the measure Police have indicated they are considering 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.
215. However, in the context of the within decision and the concerns regarding bush camps and long grassers in the vicinity of the proposed McMillans Road site, a permanent licence condition requiring customers to satisfy the licensee that they have a legitimate address at which to consume takeaway alcohol would, in my view, go some considerable way to preventing long

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<sup>27</sup> Decision Notice of the Liquor Commission dated 20 September 2019 at paragraph 342

<sup>28</sup> Ibid at paragraph 155

grassers, and particularly those from communities outside Darwin, from purchasing liquor from the proposed Dan Murphy's outlet. Such a condition would also prevent people arriving at the airport from remote communities from purchasing alcohol unless they were able to satisfy the licensee that they had a legitimate residence while in the Darwin area at which to consume liquor.

216. In its further submissions FARE notes that the proposed McMillans Road site is next to a family precinct that includes King Pin, Flip Out and Darwin Ice Skating Centre and that, arguably, the change of location now increases public health risks for children and youth.
217. As noted above, the materials provided to the Director by NT Airports include letters from Flipout Trampoline and Little Flyers Darwin Childcare, both of which are located on Osgood Drive in close proximity to the proposed McMillans Road site. Both advised that they had no objection to a Dan Murphy's outlet being established at that site.
218. It must also be noted that the Dan Murphy's outlet would operate as a takeaway liquor outlet with no consumption of liquor at the premises. The most that children attending the venues mentioned in FARE's submissions would observe would be customers conveying packaged liquor to their vehicles. The same situation would arise regularly in any shopping centre car park that includes a bottle shop adjacent to a supermarket and other stores. I do not attribute any weight to FARE's submission that the proximity of the proposed Dan Murphy's site to the family oriented centres would exacerbate the harmful effect that alcohol has on children and youth.
219. In all the circumstances outlined above I am satisfied that the proposed McMillans Road site is an alternative and an appropriate site for the location of the proposed Dan Murphy's outlet, albeit that site is 1.3 km from the original Bagot Road site. Significant in my view in that regard is the support of Ms Secretary and the GDA. In that regard I note that despite their advice to the Applicant, both Ms Fejo-Frith and Ms Havnen on behalf of Danila Dilba have publicly expressed their concerns about the McMillans Road. However, since their letters to Airports NT, both have publicly stated they do not support a Dan Murphy's outlet in any location in Darwin. FARE has made formal and unequivocal submissions to the same effect.

### Density:

220. As required by the Act, the Commission's considered the density of liquor licences in the catchment area of the proposed site for the Dan Murphy's outlet at Bagot Road in considerable detail<sup>29</sup>. The Commission referred to the findings of the Riley Review in that regard which concluded:
- "The evidence clearly shows density, as defined by the number of outlets and the volume of sales, for a particular geographical area or region, are essential considerations in assessing the public interest. In considering density, it is not sufficient to simply look at the number of outlets. A consideration of density must necessarily extend to the volume of alcohol sales of particular categories of licenses"*<sup>30</sup>.
221. There is no doubt given the floor size of a typical Dan Murphy's outlet and the range of products offered that a store of that nature would impact on the density of outlets in a particular locality, regardless of where that locality is situated.
222. However, that fact alone does not necessarily lead to the conclusion that the addition of a Dan Murphy's outlet in Darwin will result in significant additional alcohol being sold in Darwin. The Applicant has consistently stated and acknowledged that the majority of Dan Murphy's sales, should the substitution be approved, will come from customers who previously shopped at one of the existing outlets in the Darwin region. The Applicant has also stated that any redirection of sales will reduce the risk of harm because Applicant will ensure that sales occur in far safer circumstances when compared with sales through some of those existing outlets.

<sup>29</sup> Ibid under the heading "Density" commencing at paragraph 268

<sup>30</sup> Ibid at paragraph 270 and Riley Review at page 59

223. FARE is consistent in its submission that it opposes the establishment of Dan Murphy's outlets, which it refers to as a "big box" liquor outlet. FARE states that there are currently no big box liquor outlets in Darwin or the NT. In comparing the size of the proposed Dan Murphy's outlet in Darwin that statement can readily be accepted. The next largest takeaway liquor outlet in Darwin is the Liquorland outlet in Pinelands which comprises just under 400 sq m of floor space.
224. It is clear from the further submission provided by FARE to the Director, including the statements of a number of the experts, that it is opposed the establishment of a "big box" outlet at any location in Darwin.
225. In his expert statement Dr Livingston states:
- A key consideration in the current hearing seems to be whether the proposed substitution of a previous packaged outlet will lead to increases in alcohol sales. There is little specific research evidence that can be relied on to address this question, although it is worth noting that, for example, in their decision to refuse the earlier application, the NT Liquor Commission found that the proposed new outlet would sell more than 40 times the amount of alcohol of the outlet it was replacing. Similarly, in previous applications, Woolworths have readily acknowledged that the larger outlets like Dan Murphy's will sell more alcohol than smaller outlets.
- Thus, while the evidence base has some shortcomings (especially in terms of scientific studies relating to the impact of big box outlets compared to other packaged outlets), the general picture from the scientific literature suggests that the addition of this Dan Murphy's store to Darwin will increase alcohol-related harms. (Emphasis added).
226. In his further statement provided to FARE Professor Smith states:
- "The establishment of a 'big barn liquor' outlet will undoubtedly increase these costs and harms. In my view, the proposed risk mitigation strategies proposed by Woolworths in its recent application, alongside the Social Impact report it commissioned Professor Roberta Ryan to undertake, provide insufficient evidence that these risks will be reduced."
227. It is noted that Professor Smith, unlike Dr Livingston, does not acknowledge that there is little specific research evidence comparing the impact of big box liquor outlets to other packaged liquor outlets. Whilst there is no reason to suggest that the view held by Professor Smith is not genuinely held the difference in his unequivocal conclusion and the qualified opinion of Dr Livingston is a stark example of the differing views of different experts even when they are supporting the same argument.
228. The expertise and qualifications of the experts on whose advice FARE relies is acknowledged and the views expressed are based on their own studies and research. However, it must also be noted that equally qualified experts engaged by the Applicant expressed different views in the hearing before the Commission and in respect of the revised application.
229. In its further submissions the Applicant presented one expert statement, being that of Professor Ryan. In response FARE submitted a further six expert reports. There is little doubt, in my view, that had the Director referred the six expert reports to the Applicant it would have responded with further expert reports contradicting or qualifying the opinions of FARE's experts, and so on. Given the fact that the Director is required to determine the application in an expedited manner, within 30 days, that process is not possible. Even if it were possible, in my view, it would not have been particularly helpful in determining the application given the inexact nature of the relevant studies and the contrary conclusions reached by the experts on both sides.
230. It should also be noted that there are in excess of 220 Dan Murphy's outlets in operation across Australia including in every jurisdiction with the exception of the Northern Territory. Numerous of those store are located in towns with populations significantly less than the combined population of Darwin, Palmerston and the rural area. For example, Wangaratta in Victoria with a population of 19,600, Bathurst in NSW with a population of 44,400, Wagga

Wagga also in NSW and with a population of 65,200 and Bundaberg in Queensland with a population of 69,000 all have an established Dan Murphy's outlet. Cairns in Queensland which has a population of approximately 154,200, (similar to the population of Darwin/Palmerston), including 10% of whom identify as Aboriginal and/or Torres Strait Islander people has two Dan Murphy's outlets.

231. Against that background, it cannot be the case, as submitted by FARE, that the addition of a "big box" liquor store in and of itself will automatically result in a massive increase in the volume of sales of alcohol a city or town and result in a significant increase in the harms associated with alcohol consumption. In general terms, most people, including those who are in the risky drinker category, have a finite amount of disposable income to spend on alcohol. It stands to reason that if residents in the catchment area defined for the proposed Darwin Dan Murphy's outlet elected to purchase their alcohol from Dan Murphy's there would be an equivalent decline in the sales at the outlet from which the person previously their alcohol.

### **Additional Harm Minimisation Strategies Proposed by the Applicant:**

232. The Applicant states that it is committed to implementing the harm mitigation measures outlined above and which Professor Ryan has considered. As Professor Ryan notes the Engagement Strategy has a dual focus. One, is to provide a framework for premises owners and business operators in the commercial precinct at the Darwin Airport in which the application is being considered to cooperate over time to ensure that any specific place issues which arise can be prevented or mitigated.
233. The second focus is to enable all interested parties to collaborate to ensure emerging issues are addressed, to test and implement potential harm prevention strategies and to share information to underpin actions which support the safest possible operation of the Dan Murphy's store.
234. Professor Ryan states that, based on her expertise and knowledge, these range of measures and the nature of this approach, while innovative, reflect the aspirations of key stakeholders for ongoing influence on practices and harm reduction measures. Furthermore, she states it offers the best combination possible of known success measures and the capacity for adaption and change as issues and contexts change.
235. Professor Ryan states that the proposal is a ground-breaking package of initiatives which provides better protection to the members of local communities whilst respecting the interests of responsible consumers. This, together with the Engagement Strategy, will significantly address the risk of harm to at risk communities from a Dan Murphy's at the McMillan's Road site.
236. The Applicant submits that it will have the highest standards of RSA both in the design of the premises and in the manner in which liquor is sold, including enhanced training and store design features, that have been developed after discussions with Police, as well as enhanced security.
237. In the NT at least the Applicant is a market leader in RSA practice, a fact that is recognised by the compliance staff of Liquor Licensing NT through the regulatory oversight of its 13 BWS stores throughout the NT. In her evidence before the Commission Ms Attard attested that she was aware of only two breaches of liquor laws in the last 10 years by staff of the Applicant<sup>31</sup>. The first breach was in 2008 in Alice Springs and related to a staff member who had not used the system that was the precursor to the current BDR. For that breach the staff member was fined and no penalty was imposed on the licensee.
238. The second breach was in respect of a BWS Katherine staff member who, in December 2019, used the BDR incorrectly and scanned her own card when conducting a sale to a customer. Following that breach the Applicant required all staff in the NT to undertake BDR training and no penalty was imposed.

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<sup>31</sup> Ibid at paragraph 206

239. In his expert statement included in FARE's further submissions Professor Miller states that his analysis had found that in Queensland and Western Australia, the probability of underage persons being sold alcohol was greater for chain stores compared with independent stores. That is certainly not the case in the NT, as evidence by fact that BWS which has operated 13 outlets in the NT for over 10 years has only been subject to two complaints. That also applies to BWS' major chain competitor Liquorland.
240. Contrary to Professor's Miller research relating to other jurisdictions, in the NT 12 complaints against licensees were referred to the Commission. Five of those complaints resulted in suspensions of the licences for periods between one and 28 days with a further two resulting in a monetary penalty. All of the licensees against whom offences were proven were independent operators and none were in respect of the Applicant or its major competitor, Coles Liquor.
241. In addition, Professor's Miller refers to his research in other jurisdictions with respect to the prevalence of minors being able to purchase alcohol without licensees checking the person's age, regardless of policies of chain liquor outlets requiring proof of age for anyone who appears to be under 25 years of age. That submission does not take account of the fact the NT has a BDR in place that requires all customers wishing to purchase takeaway alcohol to produce an authorised form of ID. It would be naive to suggest that underage persons in the NT do not obtain alcohol however, it is reasonable to suggest that an underage person attending at a bottleshop is more likely to be detected in the NT than in jurisdictions that do not have a BDR system in place.
242. Professor Ryan acknowledged that during her engagement with the Applicant it had demonstrated a commitment to playing a positive role and working collaboratively to continue to address factors which lead to harm for risky drinkers. She stated that the measures in place and those proposed go beyond the usual point of sale mitigation measures and include a commitment to a broad-based engagement that will encourage other outlets to take similar steps to reduce the risk of harm.
243. The Commission accepted that the Applicant has a proven record in the NT as a responsible licensee and stated that it had no doubt that it will continue to comply with its obligations under the Act and the terms of any licence. The Commission noted however that the risk mitigation strategies that would be in place for the previous Bagot Road site were, for better or worse, no different from what the Applicant is currently doing with its BWS stores.<sup>32</sup> That is no longer the case.
244. In its further submissions to the Director the Applicant undertook to adopt the following additional mitigation strategies and measures beyond what is mandated by the 2019 Act should the application for a Darwin Dan Murphy's be approved:
- A voluntary MSP on the following categories of liquor products greater than the \$1.30 per standard drink MSP stipulated in the 2019 Act;
    - Beer - \$1.35 per standard drink;
    - Wine - \$1.40 per standard drink;
    - Fortified wine - \$1.40 per standard drink; and
    - Glass spirits - \$1.35 per standard drink.
  - No external or local advertising of the Dan Murphy's 'lowest liquor price guarantee';
  - No sales of cask wine;
  - No sale of fortified wine in packaging greater than 750 ml; and

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<sup>32</sup> Ibid at paragraph 214

- The development of an Engagement Strategy with the surrounding Aboriginal communities and stakeholders including continued engagement with the GDA and Larrakia Nation on issues of concern to those groups.

245. In her report included in the further submissions from FARE Dr Ziller refers to the increased MSP proposed by the Applicant and opines that whilst this is most tangible of the mitigation strategies proposed it is a voluntary measure that the Applicant could cease at any time in the future. That view does not take account of the fact that the MSP proposed by the Applicant could readily be the subject of an enforceable licence condition imposed by the Director under section 334(6)(b) of the 2019 Act as amended.
246. In considering the application before it, the Commission declined to impose a higher MSP on certain products and stated that *"would be akin to the Commission setting a higher MUP for this particular licensee"*<sup>33</sup>. The Commission also noted that the Riley Review originally recommended a MSP set at \$1.50 but the Legislature determined to lower it to \$1.30. In the Commission's view to increase the MSP for the Applicant only could be seen as attempting to usurp the clear intentions of the Parliament by imposing a higher threshold for the Applicant and potentially breaching competition policy principles.
247. Dr Ziller expressed similar views and stated that efforts to enforce the additional MSP measure, for example, as a licence condition, would create a situation where "Licensing NT" would be applying different prices for different products among different retailers and thereby fall foul of competition law. Even were that to be the case it is unlikely that the Applicant could or would make a claim that such a licence condition was anti-competitive when it in fact proposed the measure as opposed to the Commission's concerns in respect of it unilaterally mandating a higher MSP for the Applicant only.
248. Conditions restricting advertising of liquor products and restrictions on the type of liquor products that may be sold are commonplace for liquor licences in the NT. As a result there would be no impediment to imposing licence conditions along the lines suggested by the Applicant to prohibit external or local advertising 'lowest liquor price guarantee' as well as a prohibition of the sale of cask wine or fortified wine in packaging greater than 750 ml.
249. 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 an increase in the level of public drinking and anti-social behaviour that is of concern to the community at large.
250. The additional measures also address the concerns expressed by the Commission to the effect the risk mitigation strategies proposed by the Applicant in its submissions to the Commission would be no different to what the Applicant is currently doing with its BWS stores. The additional harm minimisation strategies proposed by the Applicant in its submissions to the Director go significantly beyond those in place for the existing BWS stores. The inclusion of those strategies as licence conditions would ensure compliance by the licensee.
251. It should also be noted that the mitigation strategies proposed by the Applicant specifically target those in the community who FARE suggests are most at risk of increased harm from the establishment of a "big box" liquor outlet, that is the risky drinkers. Apart from the product restrictions, the other measures proposed by the Applicant are unlikely to have any impact at all on responsible drinkers.

### **Community Engagement Strategy:**

252. In the further submissions provided by the Applicant Professor Ryan refers to the Engagement Strategy proposed to be implemented by the Applicant and notes that it has a dual focus. Firstly, to provide a framework for premises owners and business operators in the precinct in

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<sup>33</sup> Ibid at paragraph 265

which the proposed premises would be located. Secondly, to enable all interested parties to collaborate to ensure emerging issues are addressed and to implement further harm prevention strategies.

253. Professor Miller opines that the Engagement Strategy, coupled with the additional harm minimisation measures proposed by the Applicant, will not significantly address the risk of harm to at risk communities from the McMillans Road site.
254. In its further submissions FARE states that the Engagement Strategy proposed by the Applicant will not be effective in mitigating against alcohol related harms due to the current levels of antipathy and mistrust directed towards the proposed store by the three Indigenous Communities in close proximity to the McMillans Road site. FARE notes that the Applicant does not have agreement from the Bagot Community or the Danila Dilba Health Service to be involved in the Strategy.
255. That submission is selective and incomplete. As noted above, the residents of two of the nearby communities, being the Kulaluk and Minmarama communities, support the establishment of a Dan Murphy's outlet at the McMillans Road site. The position of the Bagot Community is at best equivocal and at worst contradictory.
256. It is difficult to reconcile that submission by FARE given the criticism directed towards the Applicant by the Commission for its failure to adequately consult representatives of the proximate Aboriginal communities prior to the original application. As noted above, the Applicant has noted that criticism, consulted members of the proximate communities and proposed an Engagement Strategy. It is difficult to see how it is the Applicant's fault that the Bagot Community and Danila Dilba have declined to engage in the development and application of the proposed Engagement Strategy.
257. In her expert statement provided to FARE, Dr Ziller is critical of the engagement strategies proposed by the Applicant stating they are inadequate, largely intangible and, in some instances, vague as to the commitment.
258. So far as the commitment of the Applicant is concerned, had there been any appetite by the Bagot Community and Danila Dilba to engage in the engagement strategy the Applicant could have been bound to comply with the strategy through a mechanism such as an enforceable undertaking. Whilst I encourage the Applicant to continue to engage with GDA, and the Bagot Community and Danila Dilba should they have a change of heart, I see no purpose in directing the Applicant to commit to an engagement strategy that, according to FARE and Dr Ziller at least, appears doomed to fail.

### **Economic Benefits:**

259. The Applicant states that the Darwin Dan Murphy's project will inject \$15 million into the NT economy and create 129 to 140 jobs over the course of the construction works together with 40 permanent jobs once the outlet is trading. The Applicant also submits that the development may also bring with it two additional tenancies at the commercial precinct, which are conditional on the Dan Murphy's development proceeding in that precinct. The Applicant states that in turn is likely to result in a significant number of additional jobs in the construction and operation of those tenancies.
260. The Applicant states that there are 227 Dan Murphy's stores in all parts of Australia, save for the Northern Territory, and that the benefits of opening the first Northern Territory Dan Murphy's at Eaton are clear and uncontroversial.
261. In addition to the economic benefits from the development of the Dan Murphy's outlet itself, NT Airports have advised Eton Fresh Markets is proposing the establishment of an air-conditioned market premises that would accommodate 40 to 50 tenants occupying 60 to 70 market stalls in proximity to the McMillans Road site. The proponents state that with an average of two persons per tenancy the proposed business is expected to result in 80 to 100 permanent jobs, excluding cleaners, security and centre management.

262. Also, Mr Baynes submitted, on behalf of NT Airports that Dan Murphy's would be the anchor tenant of the airport's commercial precinct development, estimated to be in the order of a \$50 million development. He stated that without Dan Murphy's development the project is unlikely to move forward. Mr Baynes stated that the overall development of this stage of the precinct will create over 160 jobs during construction, and support approximately 135 permanent jobs once the overall development is completed.
263. In a recent decision of the Commission in respect of a substitution of premises 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>34</sup>
264. It should be noted that the application referred to above entailed the substitution of the liquor licence for a defunct Darwin CBD public bar to alternative licensed premises, also in the CBD and owned by an entity related to the applicant. The motivation for the substitution application, as disclosed by the applicant, was to preserve the gaming machine licence attached to the defunct premises.
265. The Applicant had estimated that re-opening the defunct licensed premises at the new location would generate in the range of 23 jobs, including part-time and casual workers. The applicant estimated that a total of approximately \$3.5 would be spent on construction costs. The Commission found that is not an insignificant sum, given the current financial challenges facing the Northern Territory. A significant factor in the Commission's consideration of the merits of that 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. The Commission also acknowledged that the development and the expenditure for the development costs may not occur in the near future and allowed the applicant three years to complete the construction.
266. In my view, the same considerations apply in this case with the major distinction being that the Applicant estimates that construction costs estimated at approximately \$15 million are more than four times the construction costs of the application approved by the Commission. That expenditure would be invested into the local economy to the benefit of local construction businesses shortly following approval of the substitution application. The Applicant has confirmed that the construction works in establishing the Dan Murphy's outlet in Eaton will be contracted to local construction and building firms.
267. That fact was also confirmed in the letter from Mr Baynes in which he stated that the developments at the Airport Precinct will be privately funded and, to date, every building in the Precinct has been constructed by locally based companies using local tradesmen. Given the state of the NT economy as it merges from the COVID pandemic, a private investment of \$15 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 Dan Murphy's outlet construction.
268. Clearly the Applicant has no control over the overall development of the commercial precinct at the Darwin airport. However, Mr Baynes is clear in view that the development is pivotal on securing a Dan Murphy's outlet as the anchor. The potential for very significant private investment at the airport's commercial precinct presents, in my view, an opportunity to grow the Territory economy at a time that is critical. The overall development, as described by Mr Baynes, also has the very real potential to support local business, both medium and small sized. In my view developments of this nature are critical to the recovery of the Darwin and NT economy.

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<sup>34</sup> AFS Realty & Business Brokers Pty Ltd AND Nundor Pty Ltd – Liquor Commission Decision Notice - 20 October 2020

### Public Support:

269. In the Applicant's view, the proposal enjoys the support of a large majority of Darwin residents.
270. To the contrary FARE submits that there is strong Territory and national opposition to the store including from many Aboriginal and Torres Strait Islander and community organisations and leaders. In that regard FARE refers to some 46 organisations and individuals who it says are opposed to the establishment of a Dan Murphy's outlet in Darwin. It is reasonable to state that the majority of those are organisations involved are health care and Aboriginal health and welfare entities, not individuals who reside in the Greater Darwin community.
271. In addition, FARE refers to and reiterates the opposition to the proposed Dan Murphy's outlet by Ms Secretary on behalf of the GDA in her evidence before the Commission. As noted elsewhere in this Decision Notice, Ms Secretary has provided written correspondence to the Applicant stating that the residents of her communities are in support of the Dan Murphy's outlet being located at the McMillans Road site. It is clear that Ms Secretary and the residents of the communities she represents have changed their minds. With respect, it is disingenuous for FARE to continue to refer to Ms Secretary's previous opposition to the project when it is now very clear that she supports the proposal.
272. I do not accept that FARE's submission that there is strong community opposition to the proposed Dan Murphy's outlet amongst Darwin residents. Whilst I am unaware of any formal surveys having been conducted in that regard, I would suggest that the general tenor in the Greater Darwin community is that the opposite is in fact the case.

### CCTV Licence Conditions:

273. The majority of takeaway liquor outlets in the NT have CCTV systems installed regardless of whether that 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 licensees own interests to monitor staff and customers to prevent theft and for other security purposes. Footage from CCTV systems is also a valuable evidence for compliance officers investigating allegations of breaches of the legislation and particularly the 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.
274. The Commission recently imposed the following CCTV condition on the liquor licence for remote a wayside inn with a takeaway authority:

#### Camera Surveillance Condition

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.

### On-Line Liquor Sales:

275. FARE submits that model for Dan Murphy's poses risks to the community in respect of its focus on online sales, which FARE states will contribute to an increase in the volume of alcohol in Darwin. FARE states further that this will increase consumption amongst Darwin residents who are at most risk.
276. It is well known that numerous interstate liquor retails have customers who reside in the Northern Territory who can order liquor products on-line for delivery to the customer's premises. That fact is actually recognised in section 44 of the 2019 Act which provides that an interstate retailer's licence is required to sell liquor from a place outside the Territory for delivery to a person or location in the Territory.

277. The risks referred to by FARE and the associated harms attributable to on-line ordering and delivery of liquor, whilst perhaps of significance in other jurisdictions, do not appear to have materialised or to be prevalent in Darwin or the NT generally despite the registration of interstate retailers. One reason for that is likely to be the time it takes for deliveries of liquor ordered on-line from interstate retailers to actually arrive in the Territory. In the capital cities in some interstate jurisdictions liquor retailers offer services for the delivery of liquor in less than 30 minutes. It is acknowledged that liquor delivery services of that nature do present an increased risk of harm, particularly in respect of problem drinkers and those most at risk of harm from alcohol abuse.
278. The Applicant currently provides for on-line ordering of liquor through its BWS outlets under the "click and collect" system whereby the customer can order liquor on-line but must attend at the liquor outlet to collect their purchases. This practice is not significantly different to a customer attending the outlet, selecting their purchase and paying at the counter. Under the click and collect arrangement the licensee is able to conduct BDR checks, as well as apply the usual RSA checks for intoxication etc., when the customer arrives at the store to collect their purchase.
279. Again, those risks can be ameliorated to a large extent by the imposition of licence conditions that, for example, prohibit same day delivery of liquor to customers who order on-line.

#### **Northern Territory Alcohol Reform Program:**

280. FARE submits that the establishment of a Dan Murphy's outlet in Darwin will undermine the NT's comprehensive alcohol reform program which has contributed to significant reductions in alcohol harm.
281. In my view that submission cannot be sustained on any level. The establishment of a Dan Murphy's outlet in Darwin will have no impact on the majority of the initiatives that resulted from the Riley Review, including but not limited to the operation of the BDR, the MSP on liquor products, the activities of the Police Auxiliary Liquor Officers at the major centres outside Darwin and the restricted hours of sale for takeaway liquor that also apply in many regional and remote centres as well as the raft of recommendations from the Riley Review that have been already been implemented.

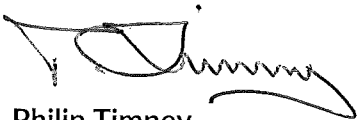
#### **CONCLUSION:**

282. In all the circumstances, and taking account of the matters set out above, I have determined to approve the application for the substitution of the liquor licence for the Stuart Park BWS store from its previous location to new premises at the proposed McMillans Road site should be approved.
283. 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 reducing the trading hours for the premises by one hour per day.
284. For the reasons set out above, and also in accordance with section 334(6)(b) of the 2019 Act, I have determined also to impose additional conditions on the liquor licence including a CCTV Surveillance Condition. In addition, I have determined to impose licence conditions in respect of the on-line ordering and delivery of liquor as well as a condition requiring the licensee to be satisfied that, in certain circumstances, customers purchasing takeaway liquor from the premises have a legitimate address at which to consume the liquor.
285. 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.
286. The above determination is made in my capacity as the statutory officer holding appointment as the Director of Liquor Licensing and independently from my role as a public sector employee.

I confirm that, in respect of section 334(1), no person, including any Minister and the Chief Executive Officer, have given me any direction in respect of this determination.

## REVIEW OF DECISION

287. 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 by the Director under section 334 of the 2019 Act as amended is not reviewable by NTCAT.



**Philip Timney**  
Director of Liquor Licensing  
17 December 2020

## Annexure A



# BAGOT COMMUNITY

PO Box 38871 WINNELLIE NT 0821  
133 Bagot Road Ludmilla NT 0820

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September 14, 2020

Mr Ross Baynes

Director Property and Operations

NT Airports Pty Ltd

1 Fenton Court

Eaton NT 0820

Dear Ross,

RE: Possible Relocation of Dan Murphy's Store

Thank-you for meeting with me recently and talking us through the alternate location for the establishment of a Dan Murphy's store in Darwin.

I confirm that the Bagot Community would not object to a Dan Murphy's store being introduced to Darwin, if the store relocates from the original site on Bagot Road to a new location at McMillians Road opposite Sabine Road, as shown on the attached location plans.

I am still worried about the way alcohol harms people in Bagot and other communities. It will be important that Dan Murphys follows all the rules about alcohol sales so that there isn't extra harm to people. Even in the different location, there are people camping around that site and Dan Murphys will need to make sure that those people aren't put at more risk.

Yours Sincerely

Helen Fejo-Frith

Bagot Community Elder

## Annexure B



Gwalwa Daraniki Association Inc.  
PO Box 746, Nightcliff NT 0814  
ABN: 71 508 188 079  
Email: [info@gdant.org.au](mailto:info@gdant.org.au)  
Phone: 89855300

25/9/2020

To whom it may concern,

In response to the moving of the Dan Murphy's project to a new site, Helen Secretary, the Chairperson of the Gwalwa Daraniki Association and one of the three original Native title claimants over Darwin, has asked me to send this letter of support for the project and to inform you, NOT ONE of any of those saying no to Dan Murphy's based on the proximity to Bagot, Kulaluk and Minmarama, have thought to contact Helen or consult with any of the people that live in these communities.

The Dan Murphy's people on the other hand have engaged with Helen and the residents of Minmarama and Kulaluk and acknowledged their concerns by incorporating pedestrian safety into the project.

Irrespective of the new site, as part of this development the Airport is seeking to address pedestrian movement along Bagot road and Dick Ward Drive, Totem road and McMillan and Sabine roads.

These Dan Murphy's developers have a much higher level of propriety than the various other traders of alcohol.

Residents of Minmarama and Kulaluk have had Alcohol Management Plans ready to be implemented since the Intervention and have been pleased to finally discuss them and hopeful for some pedestrian safety outcomes.

"Our people that actually live at Minmarama and Kulaluk have the human right to drink in their own home like anyone else in Australia and GDA insists that is our members and residents rights, however everyone at these communities knows that if there is a disturbance or violence then it is off you go and the police come along in the exact same way it happens in everyday Aussies homes." HS

"We do not need more racist interventions; we want to be treated the same. Being treated equally may be the first step in 'closing the gap'. Maybe those people objecting could visit our communities and talk to us the residents, we are sick of people talking for us." HS

Helen would like to say to those couple of dozen people using the race card and Indigenous communities as an excuse for their own purpose to contact her and she will be happy to discuss the situation of each and every person that lives at these communities so they may be more understanding of what is actually happening on the ground.

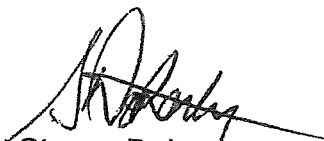
"I will introduce you to the old people, the good men and women who go to work every day and the children and you can ask them what they think about getting some safety measures built into the surrounds of Bagot Community and the roads near our communities." HS

GDA are also working on caring for countrymen when they visit Darwin. You may call them itinerant, but they are indigenous people visiting from their country that are not accommodated for here in Darwin and that is why GDA are working on a solution. Don't get confused with Indigenous people that live in town communities and the 'countrymen' that you call itinerant that just wander the streets because as yet no one cares for them, they are two different demographics.

Once again Helen would like to reiterate that she and a vast majority of the residents of Kulaluk and Minmarama would like to see the Dan Murphy's development go ahead, irrespective of the location, because for the first time they might get something done about pedestrian safety along Bagot and other roads.



Helen Secretary  
Chairperson for GDA



Steven Doherty  
Personal Assistant to the Chairperson

## Annexure C



**Danila Dilba**<sup>®</sup>  
Health Service

### Corporate Services

Binyolkga Centre  
2<sup>nd</sup> Floor, 28-30 Knuckey St  
Darwin NT 0800

GPO Box 2125  
Darwin NT 0801

(08)8942 5400

[info@daniladilba.com.au](mailto:info@daniladilba.com.au)

[www.ddhs.org.au](http://www.ddhs.org.au)

September 14, 2020

Mr Ross Baynes  
Director Property and Operations  
NT Airports Pty Ltd  
1 Fenton Court  
Eaton NT 0820

Dear Ross,

### **Alternative Location for Dan Murphy's Darwin**

Thank-you for meeting with Danila Dilba recently and talking us through a possible alternative location for the establishment of a Dan Murphy's store in Darwin.

Danila Dilba continues to have reservations about the public health impacts of a new big box liquor outlet in Darwin's northern suburbs given the existing high levels of alcohol related harm in the area and across the NT. By way of background, it is worth noting some key data on alcohol-related harm in the Northern Territory. The estimated total social cost of alcohol in the NT in 2015/16 was \$7,577.94 per adult. Despite a decline across Australian in the consumption of alcohol, the Northern Territory continues to have the highest reported rates of alcohol consumption per capita in Australia. A significant concern in relation to high alcohol use in the NT relates to the prevalence of Foetal Alcohol Spectrum Disorder. While notoriously difficult to accurately estimate, one study of prevalence in the NT using a ten year data period found that among Aboriginal children the rate could be as high as 4.7 per 1,000 births compared to international estimates of 0.5 to 2 per 1,000 births. This has a significant impact on the lives and prospects of these children with a high proportion of child protection orders

relating to children with FASD. These Territory wide impacts can not be ignored when considering the risks of adding significant volume of alcohol into the Darwin market.

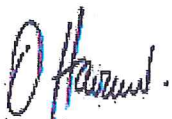
However, our formal objection to the Dan Murphy's proposal was based in large part on the proximity of the store to very vulnerable Aboriginal communities. We note that the Liquor Commission in its decision to refuse the application also gave considerable weight to the potential harms that were likely to arise related to the location on Bagot Road.

On the basis of the Liquor Commission analysis of likely harms and the advice of our own experts, I confirm that Danila Dilba Health Service would not formally or publicly object to an alternative location as discussed on McMillians Road opposite Sabine Road as shown on the attached location plans. On the other hand, Danila Dilba will not support the support the proposal either but will remain neutral.

I also emphasise that this does not mean that Danila Dilba will refrain from speaking or taking a position on any broader issues related to alcohol related harm, harm reduction or any matter relating to alcohol policy in the NT or to any failures in relation to harm minimisation and compliance with relevant laws and regulations by Dan Murphy's should it proceed or any other liquor outlet. Nothing in this letter prevents Danila Dilba from speaking up about any such issues should they arise.

I encourage NT Airports to take all steps possible in its dealings with Endeavour Drinks and the Dan Murphy's outlet to minimise harms, to support compliance with relevant laws and regulations and to maintain contact with local communities to ensure that any concerns about harm are heard.

Yours Sincerely



Olga Havnen  
Chief Executive Officer

# Annexure D

## Appendix B

### Purpose of the Strategy

1. This document sets out key components of a framework for Woolworths Group Limited and its subsidiary, Endeavour Group Limited (EDG), to engage key stakeholders in Darwin on an ongoing basis to minimise the risk of potential harm to risky drinkers from the sale of alcohol at the proposed Darwin Dan Murphy's. The framework has been prepared as a draft to be tested and further developed in collaboration with key stakeholders:
  - (a) Members of the Gwalwa Daraniki Association that look after Kulaluk, Minmarama Park, and Juninga Aged Care Facility, and the Bagot Community Advisory Committee
  - (b) Larrakia Nation Aboriginal Corporation
  - (c) NT Airports
  - (d) Darwin Northern Suburbs Liquor Accord
  - (e) Darwin Public Places Service Collaboration Group
2. The draft framework is to be shared openly with these stakeholders for comment and then amended based on their feedback. A brief has now been issued by the Applicant for the local and independent management of this process.
3. The framework recognises EDG's existing operations in Darwin through its BWS Stores and will be implemented regardless of the decision on this the liquor licence application.

### Relationship of the Strategy to Harm Minimisation Measures

4. The Strategy is in addition to the agreed package of harm minimisation measures recommended by the independent expert that has been engaged to assist with understanding the social context for and implications of the proposed licence. Notwithstanding, the key components of the Strategy are also intended to be a vehicle to assist with implementation of some of the agreed mitigation measures.

### Aim of the Strategy

5. The Aims of the Strategy are to:
  - (a) Acknowledge the highly unique context and any elevated risk of harm for risky drinkers from the potential sale of alcohol at the proposed Darwin Dan Murphy's.

- (b) Demonstrate Dan Murphy's commitment to going above and beyond as industry leader in the responsible sale of alcohol in this unique context.
- (c) Commit to developing and supporting implementation of additional alcohol related harm management and minimisation measures in collaboration with key stakeholders.

### **Principles of the Strategy**

- 6. Through this Strategy, EDG will engage key stakeholders to develop and support the implementation of measures to minimise and manage the risk of harm to risky drinkers from the sale of alcohol at the proposed Darwin Dan Murphy's.
- 7. The following principles will guide the development and implementation of the Strategy and component measures:
  - (a) Continuous, ongoing engagement
  - (b) Indigenous led
  - (c) Locally facilitated
  - (d) Commitment based
  - (e) Adequately resourced
  - (f) Independently chaired and evaluated
  - (g) Regardless of liquor licence application outcome

### **Core commitments of the Strategy**

- 8. Through this Strategy, EDG commits to:
  - (a) Support the Kulaluk and Minmarama Park communities identify and implement priority measures from the draft Alcohol Management Plan prepared by those communities.
  - (b) Support the Bagot community develop an Alcohol Management Plan and implement priority measures of that Plan.
  - (c) Work with Darwin Northern Suburbs Liquor Accord to implement further harm minimisation measures.
  - (d) Fund the implementation of priority measures identified by the communities through the Alcohol Management Plans they develop.

- (e) Co-fund implementation of other alcohol harm minimisation and management measures identified and agreed by other key stakeholders.
- (f) Supporting the development and implementation of alcohol related harm measures that are evidence based and cover the full spectrum of harm minimisation, supply reduction, and demand management.
- (g) If the Darwin Dan Murphy's licence application is approved, work with NT Airports to establish a landholder / tenant group to interface with the Darwin Public Places Service Collaboration Group to manage issues arising from the sale of alcohol in and around the Airport precinct.

### **Process to further develop the Strategy and progress implementation**

9. To further develop the Strategy based on this framework, EDG will through the engagement of a locally based provider:
  - (a) Call for Expressions of Interest from eminent local persons as an Independent Chair of the process to develop and implement the Strategy. Representatives of the communities must be involved in selecting the person.
  - (b) It is expected this person will have expertise and experience in alcohol related harm minimisation and working with risky drinkers at elevated risk of harm, particularly Indigenous communities.
  - (c) This person will be responsible for ensuring all processes have input from the communities in the manner in which those communities see fit.
  - (d) Request for a Quote from Darwin based firms to facilitate the process has been developed and advertised to further develop and implement the Strategy based on this framework, in particular working with the communities and other stakeholders as appropriate to develop, identify, and implement priority measures from their Alcohol Management Plan. This firm must include Indigenous employees, and representatives of the communities must be involved in the process to select the successful firm.
  - (e) Engage directly with representatives of the communities until the Independent Chair is appointed. Once the Chair is appointed, they will then assume responsibility for facilitating engagement between EDG and the communities.
  - (f) Engage with NT Airports, Larrakia Nation Aboriginal Corporation, the Gwalwa Daraniki Association and Darwin Public Places Service Collaboration Group to devise the most appropriate approach to ongoing collaboration to identify and support

implementation of additional alcohol related harm minimisation measures.

### **Next steps**

10. This draft framework for the Strategy will be shared openly with key stakeholders for comment. Those comments will then be shared amongst all key stakeholders so there is awareness and understanding of key issues on which feedback has been received.
11. Once the framework is agreed by stakeholders, it will be provided as supporting evidence in the determination of the liquor licence application for Darwin Dan Murphy's. It will be recommended that the eventuating Strategy be made a condition of the licence if approved.
12. EDG will establish a senior organisational representative to maintain contact with stakeholders and progress key processes until the Independent Chair is selected and appointed.

## Schedule

### Data, information and literature regarding the efficacy of the MUP and BDR

#### Banned Drinker Register

- The BDR was first introduced across the Northern Territory in 2011-12 but decommissioned without any formal evaluation of its outcomes. The BDR was reintroduced on 1st September 2017 as a supply reduction measure that involves placing people that consume alcohol at harmful levels onto a register that prohibits the purchase of alcohol from take-away outlets.
- All consumers have their photo ID scanned at point of purchase. Those not on the BDR can purchase and those that are on the BDR cannot purchase.
- Additional local restrictions on the quantity of alcohol that can be purchased also apply. In these areas, a transaction may result in a no sale because a person not on the BDR is attempting to purchase liquor in excess of the local restriction.

#### Minimum unit price

- A MUP was implemented in the Northern Territory on 1 October 2018 that set a minimum price of \$1.30 per standard drink. The goal of the MUP is to minimise the consumption and harms associated with high-alcoholic content, low-cost beverages and is intended to have a minimal impact on moderate consumers.<sup>3</sup> The MUP was introduced as part of a suite of interventions that also included the BDR introduced September 2017 and PALIs introduced June 2018 in Alice Springs, Katherine, and Tennant Creek.
- The NT is one of just a few jurisdictions in the world where this type of societal level intervention has been introduced. This type of intervention is considered one of the single most effective at reducing alcohol purchase, consumption and related harms. There is strong evidence from numerous studies conducted in 15 European countries, America, Canada, New Zealand and elsewhere, that levels of alcohol consumption in the population are closely linked to the retail price of alcohol.<sup>4</sup> The effects of an MUP are also considered to be larger for harmful drinkers than moderate drinkers as harmful drinkers are more responsive to price change.<sup>5</sup>

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<sup>3</sup> Coomber K., Miller P., Taylor N., Livingston M., Smith J., Buykx P., Clifford R., Scott D., Clifford S., Chikritzhs T., Nambiar D., & Moayeri F. *Investigating the introduction of the alcohol minimum unit price in the Northern Territory. Summary Report (February 2020)*. Deakin University, Geelong Australia. Prepared for the Northern Territory Department of Health.

<sup>4</sup> Business and regulatory impact assessment for minimum unit price of alcohol. 2012. Scottish Government.

<sup>5</sup> Business and regulatory impact assessment for minimum unit price of alcohol. 2012. Scottish Government.

## Conclusions

- There is now a considerable body of evidence which demonstrates that a range of harm prevention measures for risky drinkers have positive effects.
- Key to their success is that communities where these measures are implemented are supportive and as much as possible tailor the interventions.
- It is a combination of measures which maximise effectiveness – while each of the measures have now demonstrated benefits, approaches which combine measures will be likely to be most effective.
- A coordinated approach between policing, local communities, treatment and support facilities aids success.
- A combination of supply and demand measures is also key. Many of the measures referred to are focused on the supply side and most studies indicate that more assistance for risky drinkers on the demand management side would be beneficial. Alcohol Management Plans can assist with demand management by providing community and group support for individuals, while increased access to individual treatment and support is also important.
- A key lesson from these studies for the Darwin context and one which is particularly relevant to this application is the importance of a precinct/place-based approach.
- The proposed location of this store (both the current and previously proposed location) has specific characteristics which require attention. These include the opportunity for consumption in the precinct, the proximity to the airport providing easy access to the store for people coming into Darwin from remote communities, its location near a busy road which has been the site of many fatalities, and its relative proximity to the three communities.
- Key lessons from this evidence have informed the approach taken to the mitigation measures in this application. Much of the work in assessing this application has been focused on engagement with key stakeholders in Darwin to understand what they would support and what they see would benefit in the reduction of alcohol related harm for both the current situation and with respect to the specific of this application.
- Alongside this work of considering the evidence in effectiveness of harm reduction strategies, and engagement with key stakeholder to understand their potential support for and ideas around harm reduction approaches, has been working closely with the Applicant to assist them appreciate the potential positive impact their engagement with these measures can have in assistance the reduction of harm for risky drinkers in Darwin.

- During this engagement with the Applicant it is clear that, as the operators of the BWS outlets as well as the operator of the proposed Dan Murphy's store, they have a significant opportunity to play a positive role in Darwin not just with respect to their own operations but also in influencing other operations, having active engagement with others including in the precinct, as well as with policing and treatment and support for harm reduction measures more broadly.

# Annexure E



FRESH MARKETS

Unit 6, 19 Miles Road,  
Berrimah, NT, 0828  
Mobile: 041 22 66 806

20<sup>th</sup> April 2020

The Hon. Michael Gunner  
NT Chief Minister  
Parliament House  
Darwin NT 0800

Dear Chief Minister,

### **New Position Eaton Fresh Markets (Airconditioned)**

I've been asked if we would entertain moving the Eaton Fresh Markets to the new proposed site.

The possibility of having the building next to Bunnings is appealing however I don't think it will be detrimental if we move to the proposed site. I'm confident this will bring some positives by moving to the new site. Firstly it will have more room to expand at a later date. Secondly I think it will have a greater visibility and flow into the complex.

Our family remains committed to building the Eaton Fresh Markets as we believe Territorians have a strong history with markets and to have a fully airconditioned markets is an added bonus for 12 months of the year.

Dan Murphy's and our airconditioned fresh markets is an excellent mix and will complement each other's businesses. As you can see from the attached plans, we have spent a lot of time with designers and engineers to allow flexibility for any future stall holders. We have designed the layout in a way that the dividing walls are not weight bearing and therefore can be removed or added at any time. Also complying with health regulations such as grease traps in the floor. There are approximately 60-70 stalls available and when finished, we expect approximately 40-50 tenants. We expect there will be an average of 2 persons per tenant. This will now have 80-100 permanent jobs not including cleaners, security and centre management.

I someday look forward to seeing you in person to discuss the further in detail.

Regards,

A handwritten signature in black ink, appearing to read "George &amp; Emily Paradisis", written over a light blue horizontal line.

George & Emily Paradisis  
Eaton Fresh Markets

# Annexure F

## Attachment E – Supporting documentation and materials demonstrating strong local and national objection to the store

Danila Dilba and AMSANT letter of objection to Gordon Cairns, Chairperson, Woolworths Group

Danila Dilba letter of objection to Gordon Cairns, Woolworths

Danila Dilba letter of objection to Chief Minister re law change

Danila Dilba letter of objection to Paul Kirby, Minister for Small Business

Danila Dilba letter of objection to Members of the NT Legislative Assembly

Danila Dilba letter of objection to Tony Edmondstone, NT airports

Open letter to the Woolworths Board by community organisations

PROMIS police data on alcohol harms near the Bagot Rd location



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Gordon Cairns  
Chairperson  
Woolworth Group  
1 Woolworths Way  
Bella Vista NSW 2153

12 November 2020

Dear Mr Cairns,

We write to you today concerning comments you have made at the Woolworths Annual General Meeting.

You claimed that Aboriginal organisations impacted by your proposed Darwin Dan Murphy's have been consulted.

Further, you claim that during those consultations we have agreed to a new location for your Dan Murphy's.

Both these statements are misleading.

While the Airport Group has had conversations with some groups concerned by the proposal, this is not Woolworths consulting properly with Aboriginal organisations in Darwin.

To be very clear – our organisations do not support you putting one of the biggest bottle shops in Australia within walking distance of three dry Aboriginal communities. We do not support the current proposed location on Bagot Road and Osgood Drive, and we certainly do not support the new location which has only just been revealed. While Danila Dilba has indicated that it would not formally object to the proposed new location, they also stated that they do not support the location but would remain neutral.

The independent Liquor Commission has detailed at length the harms that will result from a store in that area, so we know Woolworths is aware of the impact of building such a store.

To misrepresent our organisations and our concerns during NAIDOC week is particularly disappointing. NAIDOC is a time to celebrate the history, culture and achievements of Aboriginal and Torres Strait Islander peoples. It is not a time to try to gain corporate traction through misrepresenting our voices.

We do not support you building this store in either location. We ask you not to put profits before the wellbeing of the Darwin community.

Yours sincerely,



**Olga Havnen**  
**Chief Executive Officer**  
**Danila Dilba Biluru Butji**  
**Binnilutlum Health Service**  
**Aboriginal Corporation**



**John Paterson**  
**Chief Executive Officer**  
**Aboriginal Medical Services**  
**Alliance NT (AMSANT)**



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20 November 2020

Mr Gordon Cairns  
Chairman  
Woolworths Group Limited  
1 Woolworths Way  
Bella Vista NSW 2153

Dear Mr Cairns

I refer to your letter of 14 November 2020 to myself and Mr Paterson, CEO AMSANT and ongoing commentary around the Dan Murphy's application and recent legislative amendments by the NT Government.

While accepting that you believe you have not misrepresented the position, I need to clarify Danila Dilba's current position in light of the Northern Territory Government's unexpected legislative amendments, and provide additional information regarding the extent to which Woolworths and Endeavour Drinks have been able to engage with Aboriginal people and representative organisations.

Contrary to commentary in various places, Woolworths and Endeavour Drinks have not engaged directly with Danila Dilba Health Service on the substantive issues relating to Dan Murphy's since the conclusion of the Liquor Commission process in September 2019. The Liquor Commission rejected the application on the basis that any benefit of the proposal would be outweighed by increased alcohol related harms.

I wrote to you and members of the Woolworths Board of Directors on 12 May 2020 to raise my serious concerns about Woolworths pursuit of an appeal against the Liquor Commission decision. You replied on 29 May did not address any of the substantive issues raised in my letter but offered an invitation to meet with senior staff of Endeavour Drinks. After some consideration I wrote to you on 27 July accepting the invitation to meet and looked forward to hearing from the Endeavour Drinks team. However, Endeavour Drinks has not approached me for that meeting. Even allowing for COVID, which would not have prevented a video meeting, the NT border has been open to greater Sydney for more than a month now. It is also my understanding that Endeavour Drinks executives visited Darwin last month.

Danila Dilba's position in relation to the Dan Murphy's application at either the Bagot Road location or the potential alternative location, is that we now unequivocally oppose it.

In relation to our commitment to remain neutral regarding an alternative site, my position was premised on the reasonable expectation that an alternative site would be subject to consideration of community impact and public

**Danila Dilba Biluru Butji Binnilutlum Health Service**  
ABN: 57 024 747 460 / ICN: 1276



interest as part of an NTCAT process. As it is now apparent that those considerations are no longer required under the new legislation, and this decision is removed from independent processes that would focus on the evidence, I no longer feel obliged or able to maintain that neutral position.

It is our firm understanding that the discussions between Danila Dilba, NT Airports and IFM were in no way being conducted on behalf of Endeavour Drinks, as stated by Endeavour Drinks in a statement provided to local media. We believed we were engaged in making clear to the prospective landlord our views and position.

I note that in your comments to the Woolworths AGM, you talked about your engagement with Indigenous people affected by the proposed Dan Murphy's store and suggested that the objectors to the proposal do not represent affected Indigenous people. I do not suggest that this statement is intended to mislead but perhaps you are unfamiliar with the organisations that formed the original objector's group in the Liquor Commission process.

Danila Dilba Health Service is an Aboriginal Community Controlled organization delivering comprehensive primary health care services with nine (9) clinics across the greater Darwin region. We have a membership base of more than 560 First Nations people and engage with a client group of more than 17,000 Aboriginal people annually.

Similarly, other objectors such as AMSANT (the peak body representing the Aboriginal Community Controlled Health Sector in the NT including Danila Dilba) and a number of health related services in Darwin, NTCOSS and AADNT, include multiple Aboriginal controlled organisations among their members, were part of the coalition of objectors. To the best of my knowledge, these organisations have not been consulted with, or engaged by Woolworths and Endeavour Drinks in the proposal to establish a Dan Murphy's outlet.

I do not dispute the value and validity of the engagement with Gwawla Daraniki and Larrakia Nation and note that these organisations are connected to particular groups within the broader Aboriginal community of Darwin.

In any event this is a question of public health evidence, not a question of opinion, and the public health evidence is clear. Again, I call on Woolworths to accept the strong public health evidence of harm that will impact on the community and withdraw this application.

Yours sincerely

Olga Havnen  
CEO Danila Dilba Health Service

**Danila Dilba Biluru Butji Binnilutlum Health Service**

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18 November 2020

The Hon Michael Gunner  
Chief Minister  
GPO Box 3146  
Darwin NT 0801

Dear Chief Minister

### **Liquor Act Amendment and Dan Murphy's**

I am writing to raise with you directly Danila Dilba's concerns about Liquor Further Amendment Bill 2020 passed in the Legislative Assembly last week ('**the amendment**'). I am concerned about the implications for health and well being of Aboriginal people in Darwin, particularly in the Northern Suburbs.

As the CEO of a health service and an objector to the original Dan Murphy's application, I find it astounding that government would pass legislation on urgency to bypass independent processes established by your own government and based on the excellent work undertaken by the Riley Review. The amendment:

- Removes all independence from the process and places final decisions in the hands of a public servant;
- Explicitly allows that public servant to make the decision without considering public interest and community impact matters;
- Removes natural justice considerations;
- Does not require the public servant to publish reasons for his/her decision;
- Requires no further consultation or gathering of evidence;
- Does not allow any appeal to NTCAT.

This situation is unprecedented - a government legislating to sideline its own independent experts from the very work they are established to undertake. It is not surprising that members of the Liquor Commission have stated that they are considering resigning from the role. It was surprising, however, to see you on ABC News this week dismiss the Liquor Commissioner's concerns as only his opinion and then go on to note that the proposal has majority community support. I can only assume that this majority community support notion is based on the NT News "survey" that showed 85% of people want a Dan Murphy's. A full analysis of the deficiencies of an on-line newspaper poll would take considerable time and words. Suffice to say that this kind of survey could only be described as the weakest form of evidence and not a basis to develop public health policy and government legislation. In any case, this is not a question of popularity but of community impact. There may be many things that the community would like but where evidence compels government to act for the greater good. For example, on line surveys suggest a high level of support for open speed limits, but your government has quite sensibly followed the evidence rather than public opinion and maintained speed limits.

The fact is that this big box liquor outlet, while popular with some, will add considerable alcohol related harms and offer very limited benefit. The Liquor Commissions' published decision on the application is clear in its conclusion that the harms will outweigh any benefits. Some of those harms may be partly mitigated by the alternative location suggested by Woolworths, but under the amendment that question is not required to be explored.

**Danila Dilba Biluru Butji Binnitulum Health Service**



Indeed, the Director of Licencing could legally go ahead and approve the current application with no change of location. In any case, relevant findings of the Liquor Commission include:


- The Dan Murphy's outlet would lead to an 80% increase in density of liquor outlets in the 5 km zone and 400% in the 2 km zone around the original site.
- The proposal would bring some economic benefit through construction but would not result in an increase on ongoing employment.
- In suburbs around the original site, police data indicates alcohol involvement in:
  - 64% of all assaults
  - 36% of sexual assaults
  - 40% of robbery offences
  - 74% of all breach of violence order offences.
- Alcohol fueled domestic violence is also high in the neighborhood, from 1 April 2018-30 March 2019:
  - Domestic violence offences were 29% higher than the rest of Darwin.
  - Alcohol-related domestic violence offences accounted for 71% of all domestic violence offences.
  - Alcohol-involved domestic violence offences were 41% higher than the rest of Darwin.

In its application, Woolworths suggested that the store would deliver \$4 million per year in "savings" to Darwin customers. This is a pittance compared to the likely increased costs to the whole community arising from alcohol related harms.

Finally, I wish to clarify Danila Dilba's position in relation to Woolworth's current suggestion that they may propose a new site. Statements by Woolworths and Endeavour Drinks are open to misinterpretation. Following discussion with NT Airports about the possibility of an alternative site, Danila Dilba indicated that while we held ongoing concerns about harms and do not support a Dan Murphy's in the original or alternative site we would not continue to formally object if an alternative site was proposed. I understand that you have a copy of the letter I wrote to NT Airports confirming this. We believed the alternative site would be preferable to the Bagot Road site. However, this position was taken in the context of the issue being before NTCAT and in the, not unreasonable, belief that NTCAT would review the alternative in light of the requirements of the Liquor Act 2019. At no time did I indicate support for a Dan Murphy's or indicate that Danila Dilba would support a truncated approval process bypassing established processes and with no requirement to consider community impact.

To be perfectly clear, in the context of the Liquor Act amendments and the new process where the Director of Licencing will decide these matters without being required to consider community impact and with no reasons to be published, Danila Dilba unequivocally opposes and objects to the approval of a Dan Murphy's at any location under the amended Liquor Act.

Yours sincerely



Olga Havnen  
Chief Executive Officer



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The Hon Paul Kirby, MLA

Minister for Small Business

GPO Box 3146

Darwin NT 0801

Dear Minister

I write to request that you urgently re-consider the pursuit of the Liquor Further Amendment Bill 2020. This Bill is unnecessary in so far as it relates to the Dan Murphy's proposal and poses risks to public health in order to speed up a development that is in no way urgent.

The process currently underway will see the NTCAT reassess all the evidence on positive and negative community impact of the proposed Dan Murphy's outlet. This is the appropriate process and will ensure that all implications are considered. There is no compelling reason that this application must be decided before Christmas or before any particular date and no potential benefit to the community from the haste being shown.

In any case, the Bill goes far beyond anything required to allow an expedited decision or even to accommodate the recently announced intention of Woolworths to propose a changed location. In relation to the location change, I note that despite implications by Woolworths Danila Dilba has not been consulted by Woolworths and has not approved the changed location. We did indicate to NT Airports that we would not formally object to the new site if it was proposed noting that we do not support it but would remain neutral.

Our objections to this Bill are not related to the location issue but to the fundamentally poor social policy in forcing a decision on such an important issue in a short time frame while explicitly removing any requirement that the decision maker consider the important public interest and community impact matters in Section 49 of the Liquor Act and exempting the decision from any requirements for natural justice.

A government that is concerned for the public health impacts on the community would never seek to expedite such a decision without consideration of community impact. It flies on the face of the years of hard work und

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the Government and stakeholders to achieve solid public health based alcohol reform which is already delivering benefits to the community.

I call on you to immediately withdraw this legislation.

I have copied this letter to all Aboriginal MLAs given the disproportionated potential impact on Aboriginal people of this bypassing of process based on good public health evidence.

Yours sincerely



Olga Havnen

Chief Executive Officer



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18 November 2020

Members of the NT Legislative Assembly

Dear MLA

### Liquor Act Amendment and Dan Murphy's

I am writing to all members of the Legislative Assembly to clarify Danila Dilba's position in relation to Dan Murphy's application being pursued by Woolworths and our concerns about the Liquor Further Amendment Bill 2020 passed in the Legislative Assembly last week ('the amendment').

As the CEO of a health service and an objector to the original Dan Murphy's application, I am shocked to see legislation brought forward to bypass independent processes established by government and based on the excellent work undertaken by the Riley Review. The amendment:

- Removes all independence from the process and places final decisions in the hands of a public servant;
- Explicitly allows that public servant to make the decision without considering public interest and community impact matters;
- Removes natural justice considerations;
- Does not require the public servant to publish reasons for his/her decision;
- Requires no further consultation or gathering of evidence;
- Does not allow any appeal to NTCAT.

This situation is unprecedented - a government legislating to sideline its own independent experts from the very work they are established to undertake.

The fact is that this big box liquor outlet will add considerable alcohol related harms and offer very limited benefit. The Liquor Commission's published decision on the original application is clear in its conclusion that the harms will outweigh any benefits. Some of those harms may be partly mitigated by the alternative location suggested by Woolworths, but under the amendment that question is not required to be explored. Indeed, the Director of Licencing could legally go ahead and approve the current application with no change of location. In any case, relevant findings of the Liquor Commission include:

- The Dan Murphy's outlet would lead to an 80% increase in density of liquor outlets in the 5 km zone and 400% in the 2 km zone around the original site.
- The proposal would bring some economic benefit through construction but would not result in an increase on ongoing employment.
- In suburbs around the original site, police data indicates alcohol involvement in:
  - 64% of all assaults
  - 36% of sexual assaults
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  - 74% of all breach of violence order offences.
- Alcohol fueled domestic violence is also high in the neighborhood, from 1 April 2018-30 March 2019:

**Danila Dilba Biluru Butji Binnulutlum Health Service**



- Domestic violence offences were 29% higher than the rest of Darwin.
- Alcohol-related domestic violence offences accounted for 71% of all domestic violence offences.
- Alcohol-involved domestic violence offences were 41% higher than the rest of Darwin.

In its application, Woolworths suggested that the store would deliver \$4 million per year in “savings” to Darwin customers. This is a pittance compared to the likely increased costs to the whole community arising from alcohol related harms.

Finally, I wish to clarify Danila Dilba’s position in relation to Woolworth’s current suggestion that they may propose a new site. Statements by Woolworths and Endeavour Drinks are open to misinterpretation. Danila Dilba had previously indicated that while we held ongoing concerns about harms and did not support a Dan Murphy’s in the original or alternative site we would not continue to formally object if an alternative site was proposed. We believed the alternative site would be preferable to the Bagot Road site. However, this position was taken in the context of the issue being before NTCAT and in the, not unreasonable, belief that NTCAT would review the alternative in light of the requirements of the Liquor Act 2019. At no time did I indicate support for a Dan Murphy’s or indicate that Danila Dilba would support a truncated approval process bypassing established processes and with no requirement to consider community impact.

To be perfectly clear, in the context of the Liquor Act amendments and the new process where the Director of Licencing will decide these matters without being required to consider community impact and with no reasons to be published, Danila Dilba unequivocally opposes and objects to the approval of a Dan Murphy’s at any location under the amended Liquor Act.

Yours sincerely



Olga Havnen  
Chief Executive Officer

**From:** Olga Havnen

**Sent:** Tuesday, November 17, 2020 11:03 AM

**To:** 'tony.edmondstone@ntairports.com.au' <[tony.edmondstone@ntairports.com.au](mailto:tony.edmondstone@ntairports.com.au)>

**Cc:** 'ross.baynes@ntairports.com' <[ross.baynes@ntairports.com](mailto:ross.baynes@ntairports.com)>

**Subject:** Dan Murphy's application

Dear Mr Edmondstone

I am writing to express my surprise and extreme disappointment at the recent statements by Woolworths and Endeavour Drinks regarding our discussions with NT Airports.

Ms McLaughlin met with you on my behalf at the initial instigation of IFM Investments to discuss our concerns and subsequently met with yourself and Mr Baynes where you raised the possibility of an alternative site. Ms McLaughlin also facilitated attendance at the meeting by Mrs Fejo-Frith from Bagot Community. It was clear in verbal communications that our conversations with NT Airports was 'in confidence'. Ms McLaughlin discussed with Mr Baynes upon providing the letter that Danila Dilba wished the letter to remain confidential. Indeed we understood that NT Airports shared this view.

My letter of 14 September to Mr Baynes was quite clear in its entirety that while Danila Dilba did not intend to formally object to the alternative location, that we in no way supported the proposal but would remain neutral. The letter is also clear that Danila Dilba continued to have significant concerns about the public health risks of a Dan Murphy's outlet in Darwin given the high levels of alcohol consumption, alcohol related harm and risk to early success in alcohol reform. I also remind you that Ms McLaughlin in an email to you placed this alternative site proposal firmly in the context of our expectation that the community impact of the new site would be considered through the Liquor Commission or NTCAT. With the passage of legislation last week to remove any requirement for involvement by NTCAT or the Liquor Commission and to explicitly not require the Director of Licencing to consider community impact, our undertaking in that letter no longer stands. With no assessment of community impact, no opportunity for any further community input and a very short period for a decision to be made, the circumstances no longer allow us to take the neutral position to which we committed earlier. As a courtesy, Ms McLaughlin advised Mr Baynes on the day the legislation was debated that Danila Dilba would speak against the legislation because it removed any requirement to consider community impact. Essentially it is now open to Woolworths to pursue either the original or alternative site with no scrutiny of impact. This can never be supported by a public health organization.

In addition to the substance of the issue, I have major concerns about the behaviour of NT Airports, Woolworths and Endeavour Drinks in relation to this issue. Woolworths and Endeavour Drinks have made various statements in the last week implying that Danila Dilba supports the alternative location, that Helen Fejo Frith supports the alternative locations, that NT Airports met with us on behalf of Endeavour Drinks and that these discussion somehow constitute community consultations.

In relation to consultations, I note that the Chair of Woolworths wrote to me in May 2020 in response to my letter to Woolworths Directors raising concerns about Woolworths decision to appeal the Liquor Commission rejection of their proposal. The Chair, while not responding to the substance of my letter, offered a meeting with Mr Donohue of

Endeavour Drinks to discuss harm minimization. I replied accepting this offer in July 2020 but Woolworths has made no further contact. It is misleading for Woolworths to claim that they have engaged with the community and have community support when they have not spoken with the largest member based Aboriginal controlled organization in Darwin and the only Aboriginal controlled health service.

We have also seen a claim in material written by Endeavour Drinks that NT Airport met with us on behalf of Endeavour Drinks, stating *"Knowing the location of the store remained an issue for Bagot Community and Danila Dilba Health Service, we asked our landlord of the proposed store - NT Airports - to meet with them to discuss a potential alternative site."* There was a mention that COVID prevented Endeavour Drinks from engaging directly which is nonsense. At no time in our discussions or correspondence with you was there any suggestion that you were acting on behalf of Endeavour Drinks. Indeed it was stated to us and to Mrs Fejo Frith that at the time of our discussion, Woolworths was not aware of the suggestion that an alternative site might be considered. Disappointingly, there are only two possible explanations. Either NT Airports was not honest with us about the nature of the discussion or Endeavour Drinks is not being truthful now.

Finally, I was extremely disappointed to see the Chair of Woolworths quoting, out of context, a paragraph of my letter to Mr Baynes following conversations between Mr Baynes and Ms McLaughlin about keeping the letter in confidence. The statement we have seen from Endeavour Drinks says *"We have received copies of letters sent to NT Airports from Bagot Community Elder Helen Fejo-Frith and Danila Dilba Health Service CEO Olga Havnen in September 2020 following those discussions, which confirm they would both withdraw their formal objections of a Dan Murphy's store in Darwin if the store was moved to the revised site"* and the Chair has quoted similarly. We understood only that you may use the content of the letter in discussions with the Chief Ministers Department about the possibility of pursuing an alternative site. We certainly did not expect to see quotes from that letter appearing in the media. In the interests of giving the full picture I have now released a copy of the full letter so that the quotes used by the Chair of Woolworths are seen in proper context. I will also discuss with Mrs Fejo Frith whether she also wishes to release her letter.

Danila Dilba will continue to advocate against the amendment to the Liquor Act and the current process for determining the outcome of the Dan Murphy's application.

Yours sincerely

Olga Havnen

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# **OPEN LETTER TO WOOLWORTHS BOARD**

To members of the Woolworths Board,

The Northern Territory (NT) is working hard to tackle the many alcohol harms we see daily in our community.

We are beginning to see improvements in the health and wellbeing of our community and its many families.

As a Territory we know that alcohol causes enormous harms – those harms are higher here than anywhere else in Australia.

Alcohol is like no other product. It causes cancer. It fuels domestic violence. Drink driving wipes out lives in an instant. We see families literally torn apart under the influence of the product your company sells.

That's why you must abandon your plans to build a Dan Murphy's in Darwin.

The Dan Murphy's you want to build will be one of the biggest bottle shops in Australia. We know that the more alcohol you sell, the more harms it causes in our community.

You also want to build this Dan Murphy's within walking distance of three dry Aboriginal communities.

Our community is now on a path to a brighter future. Our kids are safer and our families are healthier with less alcohol washing through our streets.

Don't derail this important work.

We ask you to stop this plan to profit from people who are at their most vulnerable.

Sincerely,

**Pat Turner**

Chief Executive Officer National Aboriginal Community Controlled Health Organisation

**John Paterson**

Chief Executive Officer Aboriginal Medical Services Alliance Northern Territory

**Olga Havnen**

Chief Executive Officer Danila Dilba Health Service

**Thomas Mayor**

National Indigenous Officer Maritime Union of Australia

**Deborah Di Natale**

Chief Executive Officer Northern Territory Council of Social Services

**Dr John Boffa**

Spokesperson

People's Alcohol Action Coalition

**Scott Wilson**

Chief Executive Officer Aboriginal Drug and Alcohol Council South Australia