

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

- Applicant:** Group of eighty one (81) Objectors
(represented by Mr Jarrod Ryan of Ryan & Durey Solicitors)
- Respondent:** Bodiga Pty Ltd
(represented by Mr Phil Cockman of Canford Hospitality Consultants Pty Ltd)
- Commission:** Mr Eddie Watling (Deputy Chairperson)
Mr Alex Zilkens (Member)
Dr Eric Isaachsen (Member)
- Premises:** Cellarbrations at Boddington, 36 Bannister Road, Boddington
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* for review of a decision by the Delegate of the Director of Liquor Licensing to approve the conditional grant of a liquor store licence.
- Date of Hearing:** 6 November 2019
- Date of Determination:** 13 January 2020
- Determination:** The decision of the Director is reaffirmed and the licence is granted.

Authorities referred to in determination:

- Woolworths v Director of Liquor Licensing (2013) WASCA 227
- Richmond Investments Pty Ltd v Commissioner of Police LC 25/2015
- Hancock v Executive Director of Public Health [2008] WASC 224
- Palace Securities Pty Ltd v Director of Liquor Licensing (1991) 7 WAR 241
- Carnegies Realty Pty Ltd v Director of Liquor Licensing (2015) WASC 208
- Executive Director Public Health v Lily Creek International Pty Ltd (2000) 22 WAR 510
- Malec v JC Hutton Pty Ltd (1990) HCA 20; 169 CRL 638; 64 ALJR 316; 13 ALR 447

Background

1. On 18 September 2018, an application was made to the Director of Liquor Licensing (“the Director”) by Bodiga Pty Ltd for the conditional grant of a liquor store licence for premises to be known as Cellarbrations at Boddington.
2. On 29 October 2018, a Notice of Objection was lodged by Ms Donna Harris. This objection was subsequently incorporated within the group notice of objections.
3. On 7 November 2018, Ryan & Durey Solicitors lodged a group Notice of Objection on behalf of 111 individual objectors.
4. On 14 December 2018, a further 11 objections were lodged as part of the group objection, bringing the total to 122.
5. Submissions were subsequently received from both Bodiga Pty Ltd and the Objectors and on 9 March 2019, pursuant to sections 13 and 16 of the *Liquor Control Act 1988* (“the Act”), the Director determined the application on the basis of the written submissions of the parties. The application for a conditional grant of a liquor store licence was approved.
6. On 7 June 2019, the reasons for the determination of approval were published (A206452984).
7. On 5 July 2019, an Application for Review of the Decision of the Director was lodged on behalf of eighty one (81) of the group objectors (“the Objectors”).
8. Submissions were subsequently received from the Objectors and Bodiga Pty Ltd (“the Respondent” in the review process).
9. A hearing of the Liquor Commission of WA (“the Commission”) was held on 6 November 2019.

The Hearing

Preliminary Matters

- i. Approval was given under section 17(1)(e) of the Act for Mr Cockman to represent the Respondent.
- ii. Submissions had been made by the Respondent questioning whether the case authorities lodged by the Applicant as part of the review process were in fact new material that would be contrary to section 25(2c) of the Act.
- iii. A submission had been invited and received from the Applicant on this matter.
- iv. The Commission advised that it had considered whether the case authorities were new material or an expansion of material that was before the Director when making his decision and had determined that the case authorities were not new material and related either to a response to the Director’s reason for the decision, or to the relevance of one-stop shopping

which had been referred to in the initial application and had been addressed in the Director's decision.

- v. As such, the case authorities were considered to be an expansion of materials that had been before the Director when making his decision.

The Liquor Licence Application

10. The proposed liquor store is to be located in premises currently occupied by National Australia Bank (NAB) and shortly to be vacated.
11. The proposal is for a convenient browse liquor store adjacent to and connected with the Boddington IGA supermarket. There will be an internal connecting doorway between the IGA store and the proposed liquor store.
12. The Boddington IGA is located on the main street of the town opposite the Shire Office.
13. The store area, including the cool room is to be 101.63m² and is to have the Cellarbrations core range of products with a focus on:
 - a) wine products from the South West of WA with a range of at least 25 varieties;
 - b) a wide range of white wines – greater than 50 varieties;
 - c) a wide range of red wines – greater than 50 varieties;
 - d) local WA white and red wines;
 - e) national and international brands of white and red wines;
 - f) a range of premium spirits;
 - g) local popular boutique beers and ciders;
 - h) international beers;
 - i) a range of quality liqueurs; and
 - j) ready-to-drink lines and fortified wines.
14. It is proposed that the liquor store will trade from 8:00am to 10:00pm Monday to Saturday with the trading hours of the IGA supermarket to be extended to match the evening liquor store trading hours.
15. The store will feature an extensive CCTV system for the safety of customers and neighbours.
16. The following attributes for the proposed liquor store were also listed in the Public Interest Assessment ("PIA") submitted with the licence application:
 - a) easy to read in-store signage;
 - b) a range of liquor products that are familiar and well known;
 - c) competitive product prices,
 - d) consistent and reliable opening hours;
 - e) modern and well laid out premises;

- f) trolley access from the supermarket; and
- g) the supply of a range of ancillary products and services such as:
 - i. a range of cool drinks, water and juice;
 - ii. wine tasting;
 - iii. ice;
 - iv. food and wine matching information;
 - v. combined promotion with products in the IGA store;
 - vi. crisps and nuts;
 - vii. wine stoppers and other wine accessories; and
 - viii. tobacco products.

17. A “change of use application” from bank to liquor store was approved by the Shire of Boddington on 18 April 2018. Council approval followed a three weeks advertising period where a number of public submissions expressed concern about the proposal, albeit that the majority of the concerns centred on the loss of the bank to the community.

Submission on behalf of the Objectors

18. Pursuant to section 74 of the Act the grounds of objection are that:
- a) the grant of the application would not be in the public interest; or
 - b) the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or
 - c) if the application were granted –
 - i. undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or
 - ii. the amenity, quiet or good order of the locality in which the premises are, or are to be, situated would in some other manner be lessened; or
 - d) that the grant of the application would otherwise be contrary to this Act.
19. It was submitted that the evidence submitted with the liquor licence application is insufficient to support a finding that the proposed premises is in the public interest. The Commission notes that the burden is on the applicant in this regard (section 38(2) of the Act) and the burden of establishing the validity of any objection lies on the objector (section 73(10) of the Act).
20. Reference was made to the 41 witness questionnaires submitted with the application where it shows that only 59% of the respondents said they would likely be a customer of the proposed liquor store. After removing respondents who work for the licence applicant, are related to an employee or did not provide sufficient personal information in response to the questionnaire, this drops to only 31%.

21. It was submitted that the application has not provided sufficient objective evidence to substantiate:
 - a) the application is in the public interest;
 - b) the statements/claims made in the Public Interest Assessment (PIA) submissions;
 - c) the proposed licensed premises will cater for the diversity of the requirements of consumers residing in or resorting to Boddington;
 - d) the existing facilities are not adequately serving Boddington; or
 - e) the public in the locality requires the liquor store facilities such as the one proposed.
22. Further, Boddington has also experienced a significant decline in a number of key areas in recent years and is no longer the “super town” it once was. Census data shows that over the period 2011 to 2016 Boddington experienced a downturn, with a reduction in population and income, higher unemployment and more indigenous persons living in the area. In June 2016, 15% of the workforce, or 390 jobs, at Boddington’s Worsley Alumina were terminated as a result of low commodity prices.
23. It was submitted that there is already a liquor store and hotel in town that sells packaged liquor in addition to an unrestricted club licence and special facility licence for Boddington Mines. The application has failed to demonstrate how the proposed store will be any different to the existing packaged liquor outlets in the locality. The Objectors note that the liquor store in town recently rebranded to Liquor Barons and has undergone substantial renovations.
24. The proposed premises will be located midway between the two existing packaged liquor outlets in town and it is submitted that:
 - a) the application has failed to meaningfully demonstrate how the premises will be any different to the other licensed premises in the locality;
 - b) the application has failed to take into account the changes to the existing liquor store in town in assessing consumer requirement;
 - c) consumers can already buy their liquor at the same time as doing their shopping given the proximity of the existing licensed premises; and
 - d) granting the application would result in unnecessary proliferation of liquor outlets in Boddington and this would not be consistent with the harm minimisation object of the Act and therefore would not be in the public interest.
25. The application for a liquor store licence has been focussed on the supposed convenience of one-stop shopping and the co-location of a liquor store next to the IGA supermarket. The Objectors are critical of the existing IGA supermarket, which is small, outdated and provides limited produce/range. The IGA does not offer a delicatessen and has a very limited range of products, resulting in a large section of the community doing their grocery shopping out of town. It is for this reason that some members of the community also purchase liquor and other products whilst out of town.

26. It was submitted that:
- a) the proposed application does not provide for one-transaction shopping;
 - b) the IGA supermarket is insufficient to meet the grocery requirements of the Boddington community, resulting in residents travelling outside of the locality for groceries;
 - c) the existing outlets in the locality meet the requirements of consumers for liquor;
 - d) the convenience of one-stop shopping is not enough to meet the public interest requirements of the Act; and
 - e) not everyone wants to buy their liquor at the same time as doing their grocery shopping.
27. With respect to harm and ill-health, there is an unacceptable level currently suffered in the locality and there is potential that this application will increase these levels.
28. It was submitted that Boddington also experiences an unacceptable level of anti-social behaviour and crime of which alcohol is a contributing factor. In view of the existing rates of alcohol-related crime in the community and the presence of at-risk groups, the grant of the application has the potential to negatively impact on the local community through the increased ease of availability of liquor and this presents an unacceptable risk, particularly when weighed against the marginal benefits of having a liquor store located next to a supermarket.
29. The Objectors also have concerns regarding increased traffic and parking as a result of the operation of a liquor store from the premises. Responses (68) to a questionnaire circulated by the Objectors showed that 76% had concerns about the possible impact that the application may have on the community, whilst 88% expressed concerns regarding parking and 87% expressed concerns relating to traffic.
30. In conclusion, the Applicant stated that in weighing and balancing the competing considerations it is not in the public interest to grant the application. The Respondent has not provided sufficient objective evidence in the application to establish that it is in the public interest for the application to be granted.

Submissions on Behalf of the Respondent

31. The Respondent, in its PIA, provided the following data:
- a) the population of Boddington is 1,198, an increase of 29% from 926 in 2006;
 - b) the indigenous population of 4.9% is higher than the State average of 3.1%;
 - c) the unemployment rate is 6.9% compared to the State rate of 7.8%;
 - d) 42.4% of employment is in the mining industry;
 - e) median weekly household income is \$1,879 compared to the State rate of \$1,595; and
 - f) households where mortgage repayments are greater than or equal to 30% of household income represent 2.4% where the State rate is 8.6%.

It was submitted that this represents a stable and relatively affluent locality with a strong work ethic.

32. Further, according to the Department of Regional Development and Lands document titled "*Western Australia's SuperTowns – Boddington...a WA SuperTown*":
- a) Boddington is a growing town with a welcoming and engaged community and an increasingly diversified economy;
 - b) Boddington is a picturesque, well-serviced town that is an important WA mining town, offering an attractive family-friendly alternative to fly-in-fly-out work;
 - c) the district of Boddington, Wandering and Williams is expected to grow to between 7,000 and 10,000 by 2051. To accommodate this growth, an ambitious Growth Plan has been developed to support the community and create employment and investment opportunities;
 - d) in 2012, two key projects have received a total of \$2.4 million in funding under the SuperTowns program, and will provide a catalyst for further investment and development in Boddington; and
 - e) the State Government is already investing in the Boddington area, with more than \$1.6 million allocated under Royalties for Regions to development of a medical centre and aged care facilities as well as housing for government employees.
33. With regard to other packaged liquor outlets in Boddington there are only two that trade similar to a liquor store. Details from observations submitted in July 2018 are:
- a) The Boddington Hotel:
 - does not have a dedicated packaged liquor facility; packaged liquor is only available for purchase over the bar counter;
 - there was no signage or prices on packaged liquor products and the range was quite limited; and
 - the premises are not situated next to or inside a supermarket.
 - b) The Boddle'O:
 - the premises is not situated next to or inside a supermarket;
 - these premises are very small at 50m²;
 - the licensed premises has irregular trading hours and is frequently unmanned;
 - there was no product signage and the stock range was very limited. The most expensive wine was priced at \$18;
 - on the day of evaluation there were no imported wines for sale. There were 3 ciders, 3 craft beers and a very limited range of red and white wines for sale; and
 - it was estimated that only 50% of the packaged liquor products were clearly priced, and there was limited stock on the floor available for purchase.
34. It was submitted that by contrast the proposed Cellarbrations Liquor Store would provide an extensive product selection with all items clearly priced. A comparison list of products and services proposed against what is currently available in Boddington was provided to support the application.

35. The proposed style of operation is as provided at paragraphs 10 to 17 above. The proponent operates similar regional liquor stores at both Onslow and Kalgoorlie.
36. With regard to the granting of this licence contributing unduly to an increase in harm and ill-health in the locality, it was submitted that:
- a) the directors of the applicant company are experience operators of liquor stores;
 - b) the premises will have an extensive CCTV system in place, compliant with the Director's policy on such systems;
 - c) the focus of the proposed liquor store is on great service and wide product range, rather than price;
 - d) there will be a detailed harm minimisation plan in place which will help in minimising any potential for harm and ill-health in the locality; and
 - e) in the questionnaires, the respondents were asked if any people, or groups of people in the locality would be at risk of increased and undue harm should this liquor licence be granted, and of those who answered, 83% said no.
37. Included in the applicant's PIA were details of witness packs distributed to people and businesses throughout the locality in order to gain the views of the local community. These packs included:
- a) a questionnaire;
 - b) a floor plan;
 - c) draft stock lists; and
 - d) an intended manner of trade document.
38. A total of 41 were completed and were included as an attachment to the PIA. It was submitted that the main themes of the responses may be summarised as:
- a) Many respondents buy their take-away packaged liquor out of the town.
 - b) There are only two existing packaged liquor outlets in the town, however:
 - i. the hotel only sells packaged liquor over the bar and does not have a dedicated packaged liquor facility;
 - ii. the only liquor store in town has irregular trading hours, and the store itself is usually unmanned;
 - iii. the packaged liquor facilities in the locality are expensive;
 - iv. the packaged liquor facilities in the locality carry a limited range of liquor products; and
 - v. the proposed liquor store (including its proposed trading hours and the proposal to lengthen the IGA supermarket trading hours to match the proposed liquor store) will have a positive impact to the amenity of the locality (e.g. more employment opportunities).

39. In summary it was submitted that the application is for low-risk licensed premises in a dedicated retail precinct and from the evidence that has been submitted the granting of the licence would be in the public interest.

Submissions and Responsive Submissions from the Objectors arising from the Application for Review

40. The Objector numbers for the review process has been reduced from 122 to 81 and the Grounds for Objection are detailed in paragraph 18 above.
41. The Objectors reiterated those matters submitted as per paragraphs 18 to 30 above and referred to a case authority relied upon by the Director in making the decision, where the convenience of one-stop shopping was stated to be of great importance to the community (*Woolworths v Director of Liquor Licensing (2013) WASCA 227*). It was submitted that this case authority had no bearing on the situation in Boddington as it related to an application for a Dan Murphy's Liquor store of nearly 1,300m² adjacent to a large suburban shopping centre in Bicton.
42. Further, in the Director's decision (A000186247) in Farmer Jack's Foodworks, Moora it was stated;

'The applicant's supermarket does not equate to a large suburban shopping centre. As the Liquor Commission observed in LC 25/2015 (Richmond Investments Pty Ltd v Commissioner of Police), the argument of one-stop shopping is diminished in a rural context as the various retail outlets and other public utility outlets accessed by the public on a daily and weekly basis are generally more dispersed over a relatively small area comprising the town and not concentrated in a large single shopping centre.'

43. The Objectors submit that the Decision Maker placed undue weight on the alleged convenience of one-stop shopping, which is, in itself, insufficient to satisfy the requirements of the Act.
44. Apart from the 41 witness questionnaires, which the Objector's reiterate, are of little probative value, the licence applicant failed to lodge any other objective and substantive evidence addressing consumer requirement and public interest.
45. With regard to the witness questionnaires, it was submitted that the Commission had, on a number of occasions in its decisions, expressed reservations about the weight that may be applied to surveys.
46. It was submitted that the Director failed to give proper, genuine and reasonable consideration to all of the evidence lodged by the 122 Objectors including evidence from the 2016 Census that showed Boddington is not a growing 'super town' as submitted in the PIA, but rather, a town in decline since 2011 in a number of key areas, such as a reduction in population, higher unemployment, more indigenous persons living in the area and a decrease in weekly personal income.

47. With regard to the level of harm and ill-health in the locality due to the use of alcohol the following evidence has been lodged by the Objectors:
- a) there are 'at risk' groups living in and resorting to the locality;
 - b) the SEIFA Index statistics of the locality evinces that Boddington experiences a level of disadvantage with an index below the benchmark;
 - c) the level of alcohol-related hospitalisations was significantly higher (1.05 times) in the locality than the State rate;
 - d) alcohol consumption is at levels considered to be risky to health for the locality at 21.7, well above the target at 16.1; and
 - e) there are unacceptable levels of alcohol-related harm and antisocial behaviour occurring in the community.

Submissions and Responsive Submissions from the Respondent Arising from the Application for Review

48. It was submitted that the liquor licence application did not receive any objection or intervention from:
- a) the Commissioner for Police,
 - b) the Chief Health Officer;
 - c) the Shire of Boddington; or
 - d) the Chief Executive Officer of Tourism WA,

agencies that would normally intervene in a liquor licence application if it is considered that there is potential for undue harm and ill-health to be caused to people or any group of people should a licence be granted.

49. The Respondent reiterated the attributes (refer to paragraph 33) that are not offered by the existing two packaged liquor outlets, and provided a table comparing products and services of the existing packaged liquor outlets and the proposed Cellarbrations.
50. With regard to the Notices of Objection, these are considered to be orchestrated and are unreliable and tainted with significant flaws in the process.
51. In summary it was submitted that:
- a) the grant of the application promotes objects 5(1)(c) and 5(2)(a) of the Act;
 - b) the risk of increased harm is not significant when regard is had to the circumstances of the locality and trading conditions offered by the licence applicant;
 - c) the likely degree of harm to result from the grant of the application is no greater than that which appears to be commonly accepted in the community; and
 - d) the Objectors failed to establish the validity of their objections as required under section 73 of the Act.

52. In response to the Objectors reference to the operation of the IGA supermarket (paragraph 25 above) details of the individual product lines, stock holdings and internal refurbishment approximately 2.5 years ago, were submitted.
53. Further responses on a number of individual submissions by the Objectors were included in the responsive submissions of the Respondent.

Determination and Reasons

54. Section 25(2c) of the Act provides that when conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
56. In conducting a review pursuant to section 25 of the Act, the Commission is not required to find an error in the Director's decision and is required to undertake a full review of the merits of the materials before the Director and make its own determination based upon those materials (*Hancock v Executive Director of Public Health [2008] WASC 224*).
57. Pursuant to section 25(4) of the Act the Commission may:
- a) affirm, vary or quash the decision;
 - b) make a decision in relation to any application or matter than should, in the opinion of the Commission, have been made in the first instance;
 - c) give directions as to any questions of law reviewed, or give directions to the Director, to which effect will be given; and
 - d) make any incidental or ancillary order.
58. Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities Pty Ltd v Director of Liquor Licensing (1991) 7 WAR 241*). The primary objects of the Act are:
- a) to regulate the sale, supply and consumption of liquor; and
 - b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 59.. The Commission has considered:
- all of the materials before the Delegate of the Director when making the decision; and
 - all written submissions filed by the Applicant and the Respondent in the review proceedings before the Commission.

60 Essentially, the issue to be determined by the Commission is whether the Applicant has satisfied the Commission that the granting of the application is in the public interest (section 38(2) of the Act). The basis of those considerations by the Commission follow.

The harm and ill-health that might be caused to people, or any group of people, due to the use of liquor – s38(4)(a)

61 In assessing this aspect of the licence application, the Commission must adopt the approach outlined in *Carnegies Realty Pty Ltd v Director of Liquor Licensing (2015) WASC 208* requiring the Commission to:

- a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the uses of liquor;
- b) make findings about the likely degree of harm to result from the grant of the application;
- c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- d) weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant has satisfied the Commission that it was in the public interest to grant the licence.

Findings as to existing levels of harm

62 The evidence submitted by the Applicant to provide an assessment of the alcohol-related harm in the locality is based on statistics provided in the Publication *“Impact of Alcohol on the Population of Western Australia”* published by the Department of Health WA in 2008 and from statements made by those responding to the questionnaires completed by objectors and other residents living nearby the premise – 68 in total.

63 The statistics submitted indicate that Boddington experiences a Standardised Rate Ratio (SRR) for alcohol-related hospitalisations of 1.05 compared to the state rate of 1.00 and that the estimated population 15 years and over who drink at a “risky” levels is 21.7, or 403 persons in a population of 1844 (Australian Health Tracker, 2017).

64 A number of the statements by questionnaire respondents also commented upon the fact that there is existing alcohol-related harm in Boddington.

65 These figures indicate that there is existing level of harm in the locality and that there are ‘at risk’ groups where the Aboriginal and Torres Straight Island people make up 4.5% of the population – 80 in a population of 1,844 (ABS Census 2016).

66 The Commission acknowledges that the alcohol-related hospitalisation data is eleven years old and whilst there is no information on the current situation, accepts that present circumstances are likely to be similar and to be consistent with many regional locations in the Wheatbelt statistical division.

67. The Commission is satisfied that:
- a) there is harm and ill-health caused to people due to the use of liquor in Boddington; and
 - b) the level of harm is not dissimilar to many other regional locations in the south of Western Australia.

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

68. This assessment requires the Commission to predict whether the granting of the licence would result in an increase in the degree of harm and ill-health caused by the use of alcohol in the locality.
69. In *Executive Director of Health v Lily Creek International Pty Ltd & Others* (2000) 22 WAR 510 His Honour Ipp J stated that:
- ‘whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in Malec v JC Hutton Pty Ltd, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability’.*
70. The issue in this licence application is whether a further 101.63m² of liquor store floor space, in addition to the 50m² that is currently provided in Boddington, will exacerbate the degree of harm or ill-health in the community. Whilst the Boddington Hotel also sells packaged liquor for consumption off the premises, the Commission is of the view that it is the dedicated liquor store situation that is pertinent to this assessment.
71. The Commission does not believe that 151.63m² of dedicated liquor store area in Boddington can be regarded as proliferation of liquor licences nor, due to the harm minimisation strategies proposed, that the grant of the licence will, on the balance of probabilities, result in a likely increase in the level of harm or ill-health.
72. The liquor store is to operate as a Cellarbrations Liquor Store, the licensees of which are experienced regional operators and the co-location with an IGA supermarket being a regular model of operation throughout the State.
73. The health statistics submitted by the Applicant (referred to at paragraph 47 above) do not indicate a locality where the level of alcohol-related harm or ill-health is such that an additional liquor store outlet, as proposed, will exacerbate the current situation.
74. The Commission also notes references in the submissions and questionnaire responses to a high level of liquor purchases from outside of Boddington evidencing the fact that there is readily obtainable supply obtainable from neighbouring centres.
75. The Commission is satisfied that, on the balance of probabilities, the likely degree of harm that would result from the granting of this licence is low.

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

76. Whilst acknowledging that there is an existing level of harm associated with the use of alcohol in the relevant locality, given that the Commission has determined that there is a low risk of an increase in harm that would result from the granting of the application, it cannot be concluded that such risk would result in unacceptable levels of harm as a result of the granting of this application.

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

- 77 Boddington currently has a population of 1,844 people with a high level of employment in the mining industry (46.4%). As with most mining communities there are periods of high economic growth and periods when the mining activities slow and sometimes cease operation.
- 78 Boddington experienced a 61% increase in population in the five years to 2011 and as part of the 'SuperTown' concept, the State Government invested \$1.25m to help address a shortage of residential land and to ease pressure on housing and rental affordability in Boddington through the construction of a second water pipeline. A further \$1.17m was made available to support small business and self-employed people in the Shire of Boddington with a specialised unit to be established to facilitate increased economic activity.
- 79 The 'SuperTown' plan provided for 500 to 1500 new home-based or other small enterprises to receive support, especially in the key growth industries such as tourism.
- 80 The 2016 census recorded Boddington having a low unemployment rate at 5.4%, lower than the State rate of 7.8% and the Australian rate of 6.9%, although statistical data submitted by the Applicant shows that over the period 2011 to 2016 Boddington experienced a downturn, with a reduction in population, higher unemployment and more indigenous persons living in the area.
- 81 Notwithstanding the fluctuations in population and the employment and indigenous population factors, the Commission is satisfied that Boddington is an important regional centre with a sufficient economic and population base where the granting of a second liquor store licence would be in the public interest.
- 82 The Commission has considered the matters of impact on the amenity and whether offence and annoyance might be caused as a consequence of the granting of this licence and is of the view that the location and size of the premises and the proposed method of operations is highly unlikely to lead to any adverse outcomes for the community.

83 Many of the objector statements refer to traffic and parking issues should the application be granted, however, the Commission relies on the planning approval position taken by the Shire of Boddington as recorded in the Minutes of the Ordinary Meeting held on 17 April 2018:

'The adjoining road system has sufficient capacity to handle traffic generation associated with the proposed liquor store.'

'It is suggested the traffic generation and associated car parking demands of the proposed liquor store will be greater than compared to the existing NABit is suggested that the landowner should provide some on-site car parking bays for customer and staff use.'

84 The Shire of Boddington has recommended certain actions be taken by the licence applicant in regards to parking and the Commission has no reason to refuse the application on traffic and/or parking grounds.

85 The licence application and submission from each party have placed a strong focus on one-stop shopping through the link between the IGA supermarket and the liquor store. Whilst offering a convenience to some customers, the Commission has placed very little weight on this factor when making its determination.

86 This is a regional town where the general community services and facilities are in close proximity, diminishing the argument of one-stop shopping (refer *Richmond Investments Pty Ltd v Commissioner of Police* (supra)).

87 There has also been reference by the Objectors to the existing packaged liquor outlets in Boddington meeting the requirements of the community, however, such a submission is a reflection of the previous "needs test" which does not apply under the legislation relevant to this application.

88 The Commission is satisfied that the licence application meets the requirements of Section 5(1)(c) of the Act in that the granting of the licence will cater for the requirements of consumers, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

89 The Commission is not satisfied that the Applicant has discharged its onus in establishing the validity of the objection pursuant to section 73(10) of the Act.

90 Accordingly, the Commission is satisfied that the licence applicant has established, on the balance of probabilities that the granting of the licence is in the public interest.

91 The decision of the Director is reaffirmed and the licence is granted.



EDDIE WATLING
DEPUTY CHAIRPERSON