

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

- Applicant:** Richmond Investments Pty Ltd
(represented by Mr Phil Cockman, Canford Hospitality Consultants Pty Ltd)
- Intervener:** Commissioner of Police
(represented by Ms Caroline Chapman, State Solicitor's Office)
- Objectors:** Ms Julie Lydia Elizabeth Robertson
(represented by Mr Ian Curlewis, Lavan Legal)
- Mr Laurie James
Mr Robert Adair
Mr Richard Taylor
(not present at the Review Hearing)
- Commission:** Mr Eddie Watling (Presiding Member)
Mr Evan Shackleton (Member)
Mr Michael Egan (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988*, for a review of a decision by the delegate of the Director of Liquor Licensing to refuse a conditional grant of a liquor store licence for premises to be known as Toodyay IGA Liquor.
- Premises:** Toodyay IGA Liquor
Shop 3, 4 Piesse Street
Toodyay
- Date of Hearing:** 15 September 2015
- Date of Determination:** 24 November 2015

Determination:

The application is refused and the decision of the Director of Liquor Licensing is affirmed.

Authorities referred to in Determination:

- *Seoul Market City Pty Ltd v Commissioner of Police* LC 27/2014
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175
- *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *Liquorland (Australia) Pty Ltd v Commissioner of Police and Director of Liquor Licensing* LC 18/2015

Background

- 1 On 30 April 2014, Richmond Investments Pty Ltd, made an application for the conditional grant of a liquor store licence, pursuant to sections 41 and 62 of the *Liquor Control Act 1988* (“the Act”), for premises to be known as “Toodyay IGA Liquor”, situated at Shop 3, 4 Piesse Street, Toodyay.
- 2 On 20 June 2014, the Commissioner of Police (“the Police”) lodged a notice of intervention, pursuant to section 69 of the Act.
- 3 Pursuant to section 74 of the Act, objections to the application were lodged by Mr Laurie James, Mr Robert Adair, Mr Richard Taylor and Ms Julie Robertson (licensee of the “Stable Liquor Store”, Toodyay).
- 4 Submissions and responsive submissions were subsequently lodged by the various parties during the period leading to the decision of the delegate of the Director of Liquor Licensing (“the Director”).
- 5 On 11 May 2015, the Director refused the application.
- 6 On 24 June 2015, Richmond Investments Pty Ltd (“the applicant”) lodged an application for a review of the decision with the Liquor Commission (“the Commission”), pursuant to section 25 of the Act.
- 7 On 30 June 2015, the Commission exercised its discretion to extend the one month time limit for the lodgement of an application for review, pursuant to section 25(2) of the Act.
- 8 A hearing before the Commission was held on Tuesday, 15 September 2015.

Submissions on behalf of the applicant

- 9 The Public Interest Assessment (“PIA”) submitted with the application sets out the following positive aspects of the application:
 - (a) a number of “witness petitions” (145), “witness questionnaires” (35), and other witness statements and letters of support lodged during the application process;
 - (b) the number of tourists visiting the town of Toodyay and the focus of the local authority (and community) on improving the town and region as a visitor centre and tourist destination;
 - (c) the limited availability of other packaged liquor outlets in the town;
 - (d) the “convenient one-stop shopping” the proposed liquor store would provide customers because of the proximity of the IGA supermarket to the proposed

liquor store, and the entitlement of residents to “expect to be able to obtain their liquor requirements at the same time as they shop for their groceries”;

- (e) the change in circumstances in the availability, and expected availability, of liquor in the town since the rejection of a similar application by the applicant in 2010;
 - (f) the success of the IGA supermarket in growing its turnover by attracting customers to the town and, according to the applicant, the “multiplier” benefits flowing to other businesses and the shire;
 - (g) the reduction in “economic leakage” that would result from the grant of the application – the applicant contends economic leakage is occurring due to “the limited range of packaged liquor products, lack of adequate stock levels and higher prices” currently experienced by consumers;
 - (h) the improved amenity for older residents shopping at the IGA supermarket due to the ease of access, proximity of public transport and car parking; and
 - (i) the additional diversity the new store would provide to consumers and the benefits additional competition and variety will bring, particularly “where the existing packaged liquor outlets are not properly meeting the demands of the local population”.
- 10 The applicant submits that Toodyay is a major tourist destination, and that the town has changed a great deal since the previous application in 2010. This can be seen in the 2011 census, which indicated a growth in population of 15.7% between 2006 and 2011. Further, the IGA supermarket turnover increased by 63% between 2011 and 2015, attracting approximately 2,500 more customers per week in 2015 than it did in 2011.
- 11 The applicant accepts that there are three licensed premises close to the proposed premises, being the Stables Liquor Store, The Freemasons Hotel and The Victoria Hotel, all of which are licensed to sell packaged liquor.
- 12 However, as is stated in the PIA, the Victoria Hotel has no dedicated packaged liquor facility, and all packaged liquor is served from the bar with no price list being available. The Freemasons Hotel does have an area set aside for packaged liquor, however, the stock is behind the bar and the area is often not attended and has a pool table set up in the middle of the area.
- 13 It was submitted that on that basis, the Stables Liquor Store effectively has a monopoly, as it is the only dedicated bottle shop in the area. Further, the Stables Liquor Store is out on its own, and away from other retail and café businesses, as well as the main tourist and picnic areas in town.
- 14 Additionally, the Victoria Hotel has not proceeded with the construction of the approved bottle shop which was approved at the time, and the Toodyay Tavern has closed down and surrendered its licence.

- 15 As a consequence of the situation of there being a low level of liquor services in the area, the town of Toodyay loses business to Northam, Mundaring and Midland.
- 16 It was submitted that the proposed liquor store will be 163.69m² in size and will form part of the current IGA supermarket and offer “one-stop shopping” to consumers in the area. There will be two (2) entrances to the liquor store, one from the street and one from the supermarket. The applicant also owns a freight business which will enable it to obtain a variety of products with more affordable pricing.
- 17 With respect to alcohol related harm, the applicant submits that it will adopt strategies designed to mitigate any harm, such as adding to the CCTV system to include the front of the supermarket, matching the trading hours of the liquor store with the supermarket, incorporating the principles of Crime Prevention through Environmental Design and locating the entry and exit points of the liquor store close to the checkouts to enable them to be supervised.
- 18 To satisfy the primary objective “to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor” (section 5(1)(b) of the Act) and address the matters in section 38 (4) of the Act, the applicant, in the PIA:
- (a) has highlighted the lower rate of reported alcohol related offences per 1000 population (in 2011) in Toodyay compared to some other regional areas in the State;
 - (b) contends that the locality appears to be made up of a stable, reasonably well educated, more mature population with a low representation of priority, or “at risk” groups;
 - (c) submits that as the existing supermarket is in a commercial area with no residents nearby, the addition of a liquor store will have negligible impact and will not cause any foreseeable offence, annoyance, disturbance or inconvenience.
- 19 With regard to catering for the requirements of consumers for liquor and related services (section 5(1)(c) of the Act):
- (a) the proposed liquor store (in conjunction with the supermarket) will offer an “enhanced modern retail facility” thereby improving the level of service to everyone in the community;
 - (b) granting of the application will facilitate the use and development of the licensed premises in a manner which reflects the diversity of the requirements of consumers in this State as it will provide a new and distinct packaged liquor service to the locality;
 - (c) the combined supermarket and packaged liquor service will enhance the shopping experience for residents and visitors to Toodyay by virtue of offering a one-stop shopping convenience that is not currently available in Toodyay – the

nearest supermarket with an associated liquor store is 54km away at the Chidlow Growers Market; and

- (d) by reference to the experience of newly developed supermarkets with liquor stores in Wongan Hills and Capel, the “economic leakage” from Toodyay will be reduced, thereby fostering new retail businesses close by.

20 In summary, it was submitted that the witness petitions and questionnaires provide very strong evidence of support for the application and the fact that there are many in the community who find the current trading conditions, pricing and product offers of the existing packaged liquor outlets to be unsatisfactory.

Submissions by the Commissioner of Police

21 The Police submitted that the granting of this application could have an impact on alcohol related harm in the community, where there is already evidence of existing harm. It was submitted that the granting of the liquor licence would have little impact on catering for the requirements of consumers, and that the “pairing” of alcohol and grocery products could influence “at risk” groups, by making alcohol appear to be an ordinary everyday product.

22 The Police introduced evidence and made the following representations:

- (a) the applicant has not met the public interest;
- (b) there is existing alcohol related harm; and
- (c) the existing outlet density is a relevant factor.

23 Whilst the applicant identifies at risk groups within the community of Toodyay as:

- (a) aboriginal people and communities;
- (b) children and young people; and
- (c) people with co-occurring mental health and alcohol and other drug related problems,

the PIA fails to identify how these at risk groups will be catered for in terms of responsible service of alcohol beyond merely citing statistics in relation to how these groups form a smaller percentage of the community than other regional towns.

24 With regard to existing alcohol related harm and offences, police data showed that between 1 January 2013, and 23 May 2014, there were 107 reported incidents of family and domestic violence in Toodyay, 35 of which involved alcohol. There were also 15 non-domestic alcohol related assaults during the same period. The majority of both were related to packaged liquor consumed at home.

- 25 Reference was made to the submission of the objector Mr Richard Taylor, a Registered Clinical Psychologist working in three out-patient clinics in the Wheatbelt, including Toodyay, and his statement that adolescent drug and alcohol use is a major public health issue in the Wheatbelt.
- 26 The Police also referred to the submission of the objector Mr Robert Adair, who in his capacity as a Relationship Councillor, advises that 90% of his clients have alcohol issues and that through his contact with 90 primary school children a week he has observed that about 10% show some Foetal Alcohol Syndrome like symptoms.
- 27 It was submitted that the Police evidence in relation to reported alcohol-related incidents in the locality is supported by evidence from Mr Taylor and Mr Adair, who are exposed to the consequences of alcohol related harm and who are concerned about the level of alcohol-related harm in the locality.
- 28 Over the period 1 January 2013, and 31 December 2013, there were also one hundred and forty six (146) relevant police attendances relating to anti-social behaviour, domestic violence and disturbances in the town of Toodyay.
- 29 With regard to outlet density, there are nine (9) existing licensed premises, five (5) with the capability to supply packaged liquor. As with many regional areas, many residents are members of local clubs which provide valuable services such as entertainment, meals, a social meeting place, as well as liquor. Toodyay is no exception to this, with the Toodyay Club Inc. having a membership of approximately 80 people, a fact not mentioned by the applicant.
- 30 It was submitted that there were already 3 liquor outlets in Toodyay, 130 metres, 250 metres and 400 metres from the proposed licence and on that basis, the granting of the licence could only provide the benefits of one stop shopping and slightly lower prices. Further, granting the application would only result in the proliferation of liquor outlets that sell packaged liquor in the area.
- 31 The grant of the licence will only be in the public interest if the potential benefits associated with the grant of the licence outweigh the likely harm caused.
- 32 Finally, the Police submitted that if the Commission was satisfied that the application should be granted, various conditions (detailed in the intervention notice) should be imposed in order to mitigate the risk.

Submission by the Objectors

Mr Laurie James

- 33 Mr James objected on the basis that there are more than adequate liquor supply outlets currently within the town site of Toodyay where there is already an existence of domestic violence and juvenile disruptions.

- 34 It was submitted by Mr James that the questionnaire offered to Toodyay residents in regard to the proposed liquor licence was poorly developed and included statements such as 'will not cause harm or ill-health to anyone in the locality' and 'is in the public interest', which cannot be directly substantiated.

Mr Robert Adair

- 35 Mr Adair objected on the basis that the application was not in the public interest, pursuant to section 74(1)(a) of the Act. Primarily, Mr. Adair submitted that there are too many liquor outlets in Toodyay, that the proposed store would be in close proximity to other liquor outlets and that the granting of the licence would have an adverse effect on the small Toodyay population.
- 36 As a relationship councillor, Mr. Adair said that 90% of his clients had alcohol related issues and, therefore, the granting of the licence could only increase the problem. Further, the economic benefits would be dubious as there could be a loss of services (sporting club income) or jobs (reducing income to existing outlets).

Mr Richard Taylor

- 37 Mr Taylor, a clinical psychologist practicing throughout the Wheatbelt, including Toodyay, submitted that adolescent alcohol and drug use is a major public health issue in the Wheatbelt that impacts on both individuals as well as families.
- 38 Mr. Taylor submitted that in his experience, children and adolescents are at particular risk of being influenced by advertising in the store which, because of its positioning adjacent to the IGA supermarket (the only supermarket in Toodyay), will have a high profile and that exposure to the associated alcohol advertising will further increase the harm that could be caused to those groups.

Ms Julie L E Robertson

- 39 Ms Robertson is the licensee of the Stable Liquor Store, Toodyay ("licensee objector") and has objected to the application on the basis that it is not in the public interest, and that it would cause undue harm or ill health and be contrary to the Act.
- 40 In support of the submission that the application is not in the public interest the Licensee Objector highlighted the following:
- (a) the licensing authority previously determined, in 2010, that the grant of a liquor store licence to this applicant at the proposed site is not in the public interest - there has been no change in circumstances since that decision that would now justify the grant;

- (b) there are a range of venues within walking distance of the proposed store capable of selling packaged liquor;
 - (c) the evidence provided by the applicant is not independent, objective or representative of the public - it cannot, therefore, be said to that the applicant has established that the grant of the licence is in the public interest;
 - (d) there is significant opposition to the grant of the licence from local members of the Toodyay community; and
 - (e) the applicant is motivated by its own private interests rather than the public interest.
- 41 It was submitted that with four other packaged liquor outlets in Toodyay, located in close distance from the IGA supermarket, the local community is well catered for in terms of access to packaged liquor and that any benefit that may be realised through the grant of the licence is outweighed by the negative aspects of introducing another packaged liquor outlet into the area.
- 42 Concerns were expressed as to the objectivity of the persons who have purportedly provided evidence in favour of the grant of the licence and reference made to the licensee objector's own Customer Catchment Survey completed by 198 persons over the period 30 May, 2014 to 25 June, 2014 with 191 of those indicating that they opposed the grant of the licence.
- 43 With regard to issues of harm or ill-health, it was submitted that the addition of another premises capable of selling packaged liquor has the potential to increase the harm and ill-health already being caused by liquor in the locality. The licensee objector is a member of the liquor accord and regularly attends the accord meetings. The local police consistently report alcohol related harm as being a problem within the Toodyay town and surrounding areas.
- 44 It was further submitted that the grant of the application would also be contrary to the Act as there are significant deficiencies in the applicant's PIA as well as other issues in that the applicant has:
- (a) failed to fulfil its advertising obligations;
 - (b) failed to comply with the licensing authority's PIA Policy;
 - (c) incorporated inaccurate statistics within its PIA; and
 - (d) made numerous statements within its PIA which are either inaccurate or misleading.
- 45 In the context of the above, it is open to the licensing authority to find, as it did in *Seoul Market City Pty Ltd v Commissioner of Police* LC 27/2014 that due to the evidence contained in the applicant's PIA being flawed, unreliable, and offering little in terms of

probative evidence and raising doubts as to the applicant's integrity, the licence should be refused.

- 46 In summary, and first and foremost, the licensing authority has previously determined that the grant of a liquor store licence to this applicant, at this site, was not in the public interest. In making that finding, the licensing authority relevantly stated that "... an application for a liquor store licence does not turn on a requirement for one stop shopping within a shopping centre". The licensee objector submits that there has been no change in the circumstances that warrants the licensing authority's previous decision being overturned.

Applicant's Responsive Submissions to Objectors and Licensee Objector

- 47 In respect to the submissions by the objectors and licensee objector, the following responses were submitted:

- (a) the July 2014 news article (*The Toodyay Herald*, July 2014 p 3) referred to by the licensee objector is incorrect and misleading as neither of the hotels, nor the club, has lodged an objection to the application;
- (b) evidence presented in the PIA demonstrates that the incidence of harm and ill-health is relatively lower than similar rural towns, and below the State average;
- (c) the proposed liquor store has been carefully designed to reduce the potential for harm and crime in general and will be part of a brightly lit, busy supermarket and Post Office complex that is an activity centre all day long;
- (d) the applicant is well aware of the responsibilities that come with being a licensee and the principal of the applicant has demonstrated over a number of years that he is a capable and responsible retailer and is very well respected in Toodyay;
- (e) the supermarket turnover has increased from \$7m to \$12m in three (3) years evidencing the applicant's ability to attract customers to Toodyay for the benefit of the town generally;
- (f) there are in fact only three (3) outlets that have the capability to sell packaged liquor to the general population of Toodyay – the Freemasons Hotel, the Victoria Hotel and the Stables Liquor Store - the Toodyay Club can only sell packaged liquor to its members;
- (g) as the applicant is not currently a licensee it is unlikely to have been invited to attend the liquor accord, however, will be prepared to do so if this application is successful;
- (h) the applicant has no issue with most of the proposed trading conditions suggested by the Police, apart from the practicality of applying the required restrictions on promotions and the application of identification checks.

Determination

- 48 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.
- 49 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, it 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).
- 50 Pursuant to section 25(4) of the Act, the Commission may:
- (a) affirm, vary or quash the decision subject to the review;
 - (b) make a decision in relation to any application or matter that 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 to the Director to which effect shall be given; and
 - (d) make any incidental or ancillary order.
- 51 Section 38(2) of the Act provides that an applicant must satisfy the licensing authority that granting the application is in the public interest. To discharge its onus under section 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community.
- 52 Determining whether the grant of an application is "in the public interest" requires the Commission to exercise a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation (refer *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175 and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241).
- 53 In determining whether an application is in the public interest, the Commission is *bound* to take into account those matters set out in section 5(2) of the Act. The Commission is *entitled* to take into account those matters set out in s. 38(4) of the Act. That is, section 5(2) is mandatory, whereas s. 38(4) is permissive (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227).
- 54 The Commission appreciates that in *Woolworths supra*, Buss JA referred to the great importance of 'one stop shopping' in large suburban shopping centres, not rural areas, and that in some circumstances, the argument may be 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.

- 55 In this case, the Commission is satisfied that the Stables Liquor Store is the only business that provides packaged liquor as its primary function, and that that aspect of the other two (2) liquor licensed businesses in the town is only complementary and a relatively small part of their business.
- 56 To satisfy the primary objective “to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor” (section 5(1)(b)) and address the matters in section 38 (4), the applicant, in the PIA:
- (a) highlights the lower rate of reported alcohol related offences per 1000 population (in 2011) in Toodyay compared to some other regional areas in the State;
 - (b) contends the locality appears to be a stable, reasonably well educated, more mature population with a low representation of priority, or “at risk” groups;
 - (c) submits the proposed liquor store (in conjunction with the supermarket) will offer an “enhanced modern retail facility” improving the level of service to everyone in the community;
 - (d) claims, by reference to the experience of newly developed supermarkets with liquor stores in Wongan Hills and Capel, that “economic leakage” will be reduced thereby fostering new retail businesses close by; and
 - (e) submits that as the existing supermarket is in a commercial area with no residents nearby, the addition of a liquor store will have negligible impact and will not cause any foreseeable offence, annoyance, disturbance or inconvenience.
- 57 The licensing authority has stated on many occasions in many of its decisions that it is not sufficient for the applicant, or an objector for that matter, to simply make assertions or offer opinions about the merits of otherwise of an application. Submissions must be supported by relevant and cogent evidence and, although not always possible, by evidence that is objective and independent.
- 58 The PIA is replete with quotations from respondents to the witness petitions and questionnaires purportedly as evidence in support of the many propositions put forward in the PIA. It is, therefore, important to assess the nature and evidentiary value of this evidence.
- 59 The witness petitions, signed by 145 customers of the IGA supermarket, were completed at the supermarket checkouts over the period December 2013 to March 2014, to signify customer agreement to the proposed liquor store. It is not entirely clear what explanatory material was provided with the one page petitions to inform respondents of the proposed nature and operation of the store.
- 60 Customers were invited to sign the petition if they agreed the proposed store “is in the public interest, will not cause undue harm or ill-health to anyone in the locality, will not cause disturbance, annoyance or offence to people who live or work in the locality, and will not harm the amenity of the locality”.

- 61 Provision was made in the petition for comment - of the 145 signed petitions, 115 respondents provided no comment, 14 respondents indicated support for more competition and 12 indicated support for the convenience of one-stop shopping. One respondent indicated the proposed store would provide even more reason not to go to Perth.
- 62 The petition states that “the Director of Liquor Licensing is interested to gauge local opinion to this application” and the 145 signed petitions and 37 witness questionnaires are presented by the applicant in the PIA as “a representative selection of people who live, work, visit or otherwise resort to the town of Toodyay”. The 37 witness questionnaires were completed by a selection (selected by the applicant) of persons who responded to the petition.
- 63 Without any analysis or correlation of the sample of respondents to the profile and demographic makeup of the locality, the Commission is of the view that neither the witness petitions nor the witness questionnaires could be said, with any confidence, to amount to a representative sample of the residents of the town or the shire of Toodyay; rather, they represent a sample of IGA customers.
- 64 However, the responses to the questionnaires do provide some insight into the views and purchasing habits and expectations of a small sample of residents in and around Toodyay.
- 65 Many of the respondents travel to Perth or Midland for their liquor requirements because of the wider range of products and the discounts and cheaper prices (at larger discount stores). Furthermore, a common theme among many, but not all, respondents is that the proposed store would provide more competition, and a better range of product at cheaper prices than are currently available.
- 66 However, there is very little or no definitive evidence that the products to be stocked at the proposed liquor store, if the application is granted, will necessarily meet the requirements and expectations of residents any better than the existing liquor store and other liquor outlets in the town. Nor is there any guarantee that those persons who have identified range and price as a problem will be satisfied with the range and price of product offered by the proposed store.
- 67 Convenience and “one-stop shopping” is also mentioned by a number of respondents to the witness questionnaire as a positive benefit if the application is granted; however, there is no cogent evidence supporting the applicant’s submissions that:
- (a) “The new one-stop shopping facility will encourage people to stay and shop in the town” which will “have a flow on effect and will increase business for other local retailers, and will help reduce economic leakage to other towns”; or
 - (b) “This has been the experience of other country towns” where “newly developed supermarkets with liquor stores attached in Wongan Hills and Capel have reduced economic leakage from the towns and fostered new retail businesses close to them”,

and there is little or no evidence that the absence of “convenient one-stop shopping” has resulted in “economic leakage to other towns such as Northam and Midland”.

- 68 On one view, it is arguable that the growth and success of the IGA supermarket in recent years, which is a significant achievement by the applicant, of itself, demonstrates that residents in the town and the region have not been deterred from grocery shopping in Toodyay by virtue of the fact there is not a liquor store adjacent to, or in the same premises as, the supermarket.
- 69 Certainly, there is evidence some residents travel outside Toodyay for their liquor requirements, but, in the main, this appears related to issues of price and range offered by the larger metropolitan stores compared to the local liquor outlets. It is also apparent that some residents undertake their liquor purchases when they are visiting Perth for other reasons.
- 70 Indeed, putting to one side the issue of range and price, it would be extraordinary if a resident of Toodyay decided to travel some considerable distance to somewhere other than Toodyay simply because they find it inconvenient to undertake their grocery shopping at one premises in Toodyay and their liquor shopping at another premises, either one of the two hotels or the existing liquor store, a small distance away.
- 71 The applicant’s contention that Toodyay lacks a “one-stop shopping” opportunity confuses the concept of one-stop shopping which may be available in a large regional or suburban shopping complex or centre. Members of a local rural community typically resort to a wide range of shops in the town for their daily and weekly requirements, and in Toodyay, some of these shops, such as a chemist and bank, are in closer proximity to the existing Stables Liquor Store than the proposed liquor store. In fact, the town of Toodyay could well be regarded as a one-stop shopping centre in a similar context as a metropolitan shopping centre where the distance factors between liquor and other purchases are similar.
- 72 Unquestionably, the location of the proposed liquor store immediately adjacent to the supermarket would provide a level of convenience to supermarket shoppers who wish to purchase liquor. However, as the Commission stated in its decision *Liquorland (Australia) Pty Ltd v Commissioner of Police and Director of Liquor Licensing - LC 18/2015* paras 125-129:

“Convenience is just one factor to be considered when considering the requirement of consumers for liquor - under the current Act it must be considered having regard to the proper development of the liquor industry, the other objects of the Act and, of course, the public interest.

It is accepted in the community, as evidenced by the many and varied shopping centres and precincts, that there may be some level of inconvenience experienced in purchasing liquor.

Liquor is a product that may have negative consequences in the community and is subject to extensive regulation as to its sale, supply and consumption. These controls and restrictions exist for the benefit of the community and whilst some

members of the community may express a desire for more convenience, the Commission is entrusted with the responsibility of making a determination on whether the public interest is served by any proposal to widen or extend the level of convenience currently enjoyed by the public by the extension or granting of certain licences.

Many shopping centres and precincts, for example, have independent liquor stores quite removed from the local supermarket, and, for that matter, removed from the bakery, post office, bank, butcher or other retail outlets or public utilities regularly frequented as part of a person's or family's weekly or regular shopping expedition. Some liquor stores are even located in relatively isolated areas separate from a shopping centre or precinct.

A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission's view, in accordance with the provisions and intent of the Act."

- 73 That some respondents to the witness questionnaires identified convenience as a positive impact on the amenity of the community if the application is granted, is clear. It would be surprising if it were otherwise.
- 74 At the same time, a not inconsiderable number of respondents to a survey conducted by the licensee objector oppose the grant of the application, and consider that harm or ill-health problems may worsen if the application is granted, suggesting that an improved level of convenience is far from important to these members of the local community.
- 75 In relation to harm or ill-health, the applicant has submitted, in essence, that:
- (a) the level of alcohol-related harm in the locality of Toodyay is below that of most surrounding towns;
 - (b) the applicant only has to "do all that is reasonably possible to minimise harm and ill-health that could potentially occur if the application is granted"; and
 - (c) any potential for harm or ill-health must not be "undue".
- 76 In support of its contention that the risk of harm or ill-health is low, the applicant also points to the fact the locality appears stable, reasonably well educated and a more mature population with a low representation of "at risk" groups, as well as to various statements from respondents to the witness questionnaires, with which the applicant agrees, to the effect that if people wish to abuse alcohol they already have the means to do so.
- 77 In response to the Police submission that the grant of the application will significantly increase the amount of liquor available in the community, the applicant claimed that "much of the packaged liquor that would be sold through this proposed liquor store

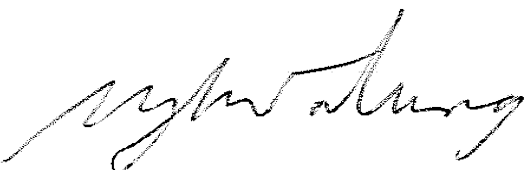
would leave Toodyay with the people who resort to the town for their weekly shopping excursion from satellite towns and farms that surround the locality”.

- 78 There is no evidence to support this contention. The response seems to be based on an unsupported assumption that an increase in alcohol availability does not present a risk to persons living outside Toodyay.
- 79 Neither the PIA nor any of the applicant’s other submissions address the risks of alcohol-related harm arising from an increase in outlet density or address the issues raised by the Police in relation to “opportunistic purchasing” of liquor as a consequence of the general exposure of alcohol products when “paired” with the sale of supermarket products.
- 80 Any risks of an increase in harm or ill-health are significant and important particularly against the backdrop of the apparent concerns of Holyoake Northam - Wheatbelt Community Alcohol and Drug Service (“Holyoake”) as reported in a 2012 edition of the Avon Valley Gazette, that alcohol is the most common form of addiction dealt with by this support organisation.
- 81 The risks of an increase in alcohol-related harm are also identified by the objectors, most notably Mr Richard Taylor and Mr Robert Adair.
- 82 A clinical psychologist operating in the Wheatbelt region, including Toodyay, Mr Taylor has commented on “widespread problems relating to the abuse of alcohol and the impact on individuals and families”. He is concerned about the risk of families spending their food budgets in the proposed liquor store (because of its proximity to the supermarket) and the risk of people consuming alcohol at harmful levels due to greater access to liquor.
- 83 Mr Taylor is also particularly concerned about adolescent drug and alcohol use and the association between adolescent drinking and exposure to alcohol advertising. Mr Taylor’s concerns are not addressed in any meaningful sense by the applicant and whilst the applicant wrote to Mr Taylor in response to his objection, the letter seems to have little relevance to the concerns expressed by Mr Taylor. Furthermore, it appears that no other attempt was made to engage with Mr Taylor or to address the concerns he expressed.
- 84 Mr Adair, a relationship counsellor, has contact with 90 primary school children a week, some of whom he has reported display Foetal Alcohol Syndrome like symptoms, and he has other clients, about 90% of whom he indicates have alcohol-related issues.
- 85 In response to Mr Adair’s concern that easier access to alcohol increases alcohol-related problems and that another liquor licence will add to the negative social cost to the community, the applicant points to the fact his opinion is in “conflict with the very many witnesses who have taken the trouble to share their opinions via the applicant’s questionnaire”. This response fails to recognise the alcohol-related harm that Mr Adair has experienced, and experiences in his professional capacity as a relationship counsellor and the fact that Mr Adair is in a far better position than respondents to the

applicant's witness questionnaire to express an opinion about the likelihood or otherwise of an increase in harm or ill-health by making access to alcohol easier in the community.

- 86 Given the level of concern from a number of different sources, the applicant would be expected to address these issues. However, there is no evidence before the Commission that the applicant has made any serious attempt to engage directly with individuals, groups or agencies who have responsibilities for, or experience in, dealing with alcohol-related harm or ill-health or people affected by such harm, such as health care professionals, health agencies (located in the town or providing services to the town and surrounding region), the local Police or safety and crime prevention agencies.
- 87 Meaningful engagement is essential to assess the positive and negative aspects of any liquor licence application, but perhaps even more so in a small country town where the negative aspects of an application can potentially have a more significant impact on the local community. It also may assist in devising strategies to mitigate the risk of harm or ill-health occurring.
- 88 The evidence of alcohol-related harm and ill-health in the community and the potential for an increase in alcohol-related harm or ill-health should the application be granted requires a cautious and measured approach to weighing and balancing the competing objectives of the Act.
- 89 It is clear from the evidence from the Police, Mr Taylor and Mr Adair, as well as the evidence presented by the licensee objector in relation to the press reported concerns of Holyoake, and on the level of alcohol-related hospitalisations within the Shire of Toodyay, that there is a considerable level of alcohol-related harm and ill-health in the community of Toodyay and generally in the Wheatbelt region, of which Toodyay is a part.
- 90 The evidence from the Police, Mr Taylor and Dr Adair also points to the potential for alcohol-related harm and ill-health to increase as a result of significantly increasing the availability of packaged liquor in the locality if the application is granted.
- 91 While it is difficult to definitively identify those who are at the most risk of harm or ill-health from an increase in the availability of packaged liquor, the current level of domestic violence and the incidence of alcohol related anti-social behaviour, strongly suggests that an increase in availability of alcohol, through the addition of another packaged liquor outlet in Toodyay, is likely to lead to an undue increase of this type of behaviour.
- 92 While this risk could be substantially mitigated by restricting external advertising and confining promotional advertising to within the proposed liquor store out of view of young children and adolescents, given the commitment that the applicant has in regards to promotional flyers "which are part of the IGA supermarket advertising campaign and the franchise agreement between the applicant and Metcash", some residual risk remains.

- 93 Whilst the degree of harm that may result from the grant of the application is difficult to quantify and may not be at the upper end of the scale in this case, balancing the risks against the benefits that may be derived from the grant of the application requires an objective assessment of the purported benefits.
- 94 The evidence relating to the support or otherwise for the proposed liquor store is equivocal and the views of the respondents to the surveys undertaken by the applicant on the one hand and the licensee objector on the other are difficult to reconcile. Based on sheer numbers of respondents to the various surveys conducted by the applicant and the licensee objector, more people than not would appear to be opposed to the application.
- 95 However, a further complicating factor is that neither of the surveys can be said to necessarily represent the view of the entire community.
- 96 Although there is evidence that the applicant has invested in building up the IGA business and premises and has contributed in other ways to benefit the community, which is highly commendable and not without significance, there is no cogent evidence that the grant of the application will reduce “economic leakage” to other towns and metropolitan Perth or that other small businesses will benefit, to any significant extent. Nor is there any evidence of substance that the grant of the application result will result in further investment in new commercial ventures in the town.
- 97 Equally, although the location of the proposed liquor store adjacent to the supermarket will provide additional convenience for IGA supermarket shoppers, as has been commented already in these reasons, the reliance on the concept of “one-stop shopping” as justification for the application to be granted is misplaced.
- 98 In the Commission’s view, the applicant has failed to demonstrate that there is a strong requirement on the part of consumers of liquor in Toodyay and the surrounding region for the proposed liquor store or that the benefits to be derived by consumers of liquor from the grant of the application are other than marginal and, to an extent, speculative.
- 99 Therefore, the Commission has determined that the applicant has failed to demonstrate to the requisite degree that the benefits inherent in the primary objects of the Act, specifically section 5(1)(c), outweigh the potential risks of an increase in harm or ill-health in the community as specified in sections 5(1)(b) and 38(4) of the Act.
- 100 Accordingly, the application is refused and the decision of the Director of Liquor Licensing is affirmed.



EDDIE WATLING
PRESIDING MEMBER