

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: JOHN MINTY

PREMISES: FARMER JACKS FOODWORKS MOORA

PREMISES ADDRESS: LOT 419 GARDINER STREET MOORA

APPLICATION ID: A000186247

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 23 MARCH 2016

Introduction

- 1 This is an application by John Minty (the applicant) for the conditional grant of a liquor store licence for premises to be known as Farmer Jacks Foodworks Moora and located at Lot 419 Gardiner Street, Moora. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Pursuant to s 74 of the Act, objections to the grant of the application were lodged by Dr Bernard Chapman, Mr Frank Crago on behalf of the Seventh Day Adventist Church and Murfett Legal on behalf of 97 objectors (originally 98, however one objector withdrew) (resident objectors). Solicitors Ryan Durey replaced Murfett Legal as the legal representative of the resident objectors during the processing of the application.
- 3 Also, pursuant to s 69 of the Act, Notices of Intervention were lodged by the Executive Director Public Health (EDPH) and the Commissioner of Police (the Commissioner).
- 4 The application will be determined on the written materials lodged, as permitted under s 13 and s 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

The applicant's evidence and submissions

- 5 The applicant currently operates the Farmer Jacks Foodworks Moora, which is a business specialising in the supply of food products for Moora and the surrounding community. The applicant seeks to complement the supermarket with a liquor store and provide a one-stop shopping convenience for his patrons by providing grocery items and liquor at the one venue.
- 6 The applicant established the supermarket in 2012 and his intention is to provide a diversification of services that has not been considered in the town for some 15 years. The supermarket is a new, air-conditioned premise which has nearly 3,000 customer transactions per week.

7 According to the applicant, the proposed liquor store will be situated on the corner of Berkes Road and Gardiner Street in the centre of town, with the Moora town site falling within no more than a 1.5 kilometre radius of the site. However, the railway line divides the town into two sections; one being on the western side and one on the eastern side. The town is more densely populated to the west where there is an existing liquor store, IGA store, hotel, child care facility, swimming pool, primary schools, hospital and other commercial businesses, compared to the eastern side where the proposed liquor store is to be located. Overall, there are eight existing licensed premises in Moora:

- Melrose Cellars, which trades under a liquor store licence;
- Drovers Inn, which trades under a hotel licence;
- Moora Hotel, which trades under a hotel licence;
- Moora Club Inc, which trades under a club licence;
- Moora Bowling Club Inc, which trades under a club restricted licence;
- Moora District Tennis Club, which trades under a club restricted licence;
- Moora Lake View Golf Club (Inc), which trades under a club restricted licence; and
- Wheatbelt Gallery, which trades under a restaurant licence.

8 It was submitted by the applicant that over a 15 year period, the population of Moora has increased by 21 per cent. The applicant stated:

“Population growth for Moora over the years is not totally reliable as statistics dating back to the town’s two hotels which are approximately 100 years old and the existing liquor store which is approximately 15 years old are difficult to obtain.

But statistics are available for the 2006 period having a population of 1822 (ABS) and then in 2011 being 2561 and currently as 2800.

When considering the average of these stats over the 8 year period, it can be seen that each year the population of Moora had increased by approximately 1.4%. With this figure, it may then be further calculated to consider the previous period (the preceding 7 years) which would date back to the existing liquor store’s establishment, which would then total to an approximate population increase over the 15 year period of 21%. As stated, this is an estimate only based on available statistics and unless there is evidence to the contrary, it could be safe to accept these figures.”

9 The applicant contended that the rise in population and related services over the last 15 years with no additional liquor licences being granted demonstrates a deficiency in the services required for the town’s needs.

10 The applicant submitted a Public Interest Assessment (PIA) to support his application. The PIA included information on:

- the demographic profile of the community;
- likely impact on the amenity of the area;
- existing crime in the Wheatbelt District; and
- the possible negative impacts from the grant of the application.

11 In this regard, the applicant submitted that it is highly improbable that the grant of the application will contribute to harm or ill-health in the community because of the strict management regime; the supply of alcohol is for consumption off the premises; customers are mostly based in town and known to staff; and people will be attracted to the premises to purchase food and liquor at the same time. The applicant stated that:

“What every (sic) level of harm or ill-health currently exists in the town, this provision could not contribute from our store purely by supplying liquor products as the same scenario really depends on the individual on how they choose to consume alcohol once they have left the premises from where they have purchased such.”

12 The applicant also submitted 2 petitions, various questionnaires and letters of support to demonstrate that the grant of the application will be catering to the requirements of consumers for liquor and related services.

13 In conclusion, the applicant submitted that:

“It is submitted that the grant of a liquor licence to be able to provide a new and improved service to the town is overdue as it is fact that the current liquor store was established 19 1/2 years ago in July 1995.

The aim is to supply the service recognised and in the interest of our customers, conditions are not opposed to subject to our customers not being inconvenienced otherwise there would be little point in seeking a licence.

It is agreed that not everyone wants to buy their liquor at the same time as doing their grocery shopping as by example, one may purchase packaged liquor after having visited the local hotel, but also it must be agreed, that the grant of the licence will provide that varied facility to allow for such choice as demonstrated by the evidence of the community.

It is also agreed that the convenience of one stop shopping alone, would not be enough to meet the entire interest of the public and that other considerations should be involved and having stated this, the objective evidence supplied in conjunction with the remoteness of any possibility of

harm occurring is strong evidence that the licence would far outweigh any potential negatives when considering the reasonable requirements of the public.

This application has been seriously considered as we see a genuine need to supply alcohol related products to our 3000 strong customer base per week in the town of Moora and it has not been simply applied for based on the assumption that it was just 'a good idea.'

Much planning, time and effort has been committed to the application as the need for a new fresh service has been recognised in the town, as proven by the cross section of the community support that can only promote all the objects of the Act.

It is only a matter of time that an application of this kind would have arisen due to the nature of (old) existing licences and failure to acknowledge and accommodate the population increase over the last 19 1/2 years additional to the accepted community standards of having at least one store in the town that offers a full complement to customers."

The submissions and evidence of the objectors

Dr Bernard Chapman

- 14 Dr Chapman is the long serving medical practitioner in the community and from his experience, Moora already has a significant degree of poverty, injury, crime and violence which are fuelled by alcohol abuse. According to Dr Chapman, increasing the availability of alcohol can only add to these problems. It was submitted that research clearly shows that increasing the density of alcohol outlets is associated with an increase in alcohol consumption and related harms. The annual cost to the Australian community from alcohol-related harm is estimated to be more than \$15 billion.
- 15 According to Dr Chapman, too many people in the local community already spend their money on alcohol and other drugs and having alcohol in a supermarket will further entice these people to spend money on alcohol rather than on nutritious food for them and their families. Dr Chapman referenced research which demonstrates that supermarket sales of alcohol increase "opportunistic" or unplanned purchase of alcohol which has the effect of increasing overall consumption and consequent harm.

Frank Crago

- 16 It was submitted by Mr Crago that the application is essentially predicated on the convenience of one stop shopping, which will only increase the local consumption and resultant alcohol-related harm in the community. This is in line with the findings in the *Education and Health Standing Committee Report No.10 Alcohol: reducing the harm and curbing the culture of excess 2011*, which states "The outcome of many

international research projects show a clear correlation between higher alcohol outlet density and increased alcohol-related harms.”

- 17 It was further submitted that having alcohol on sale in the supermarket will put it in direct competition with food and household essentials for part of the family weekly spending budget. There will be increased advertising exposure to patrons of the supermarket, including children, and people with alcohol dependency will be confronted with an additional temptation each time they go grocery shopping.

The resident objectors

- 18 It was submitted by the resident objectors that the grant of the application:
- a) has the potential to increase the harm or ill-health caused to people, or any group of people, due to the use of liquor;
 - b) is not warranted to cater for the requirements of consumers for liquor; and
 - c) would disregard the proper development of the liquor, tourism, and hospitality industries.
- 19 According to the resident objectors, the applicant's PIA is out of date or misleading in some of its assertions. For example,
- the applicant's claim that Moora has experienced significant growth over a 15 year period is incorrect. Data from the Australian Bureau of Statistics (ABS) indicates that the population for Moora (LGA/SLA) in 1996 was 2,574; in 2006 it was 2,410; in 2011 it was 2,476 and the estimated population in 2013 was 2,535. These figures indicate that the population in Moora has declined, and in 2009/10, Moora experienced one of the fastest declining populations in Australia, down 1.2%;
 - the applicant's assertion that the railway line divides the town and the inferences he draws from that are inconsistent. The train line in Moora is only utilised for the passenger train between Geraldton and Perth, which passes twice a day, four times per week. Within the town, there are three streets that cross railway line together with a number of walkways. Given the small size of the town, there are sufficient crossings over the train line which is barely used. On the one hand the applicant uses the railway line as a barrier, with the at risk groups being situated west of the railway line, while on the other hand he states that the proposed liquor store will cater 'for the requirements of the greater part of the town's consumers' and that the store "effectively services the entire town each week." ;
 - a number of the shops referred to in the applicant's PIA have closed and there are a number of vacant premises in town, resulting in unemployment; and
 - the drive through bottleshop at the Junction Hotel, located across from the proposed premises re-opened in May 2015 while the bottleshop located in nearby Walebing was closed until mid-2015. These premises most likely would have re-

opened after the applicant's market research was collected and therefore the respondents to the petitions and questionnaire were unlikely to have taken this into consideration.

- 20 To support the ground of objection that the grant of the licence will cause undue harm in the community, the resident objectors submitted that:
- there is an overrepresentation of at risk groups within the community whereby indigenous persons make up 12.3% of the population of the Moora LGA and 17.3% of the Moora Urban Centre Locality compared to the State figure of 3.1% and persons under the age of 19 years make up 25% of the population;
 - Moora has a SEIFA Index (Socio-Economic Index for Areas) of 986.7, which indicates a level of disadvantage;
 - in 2009/10, alcohol was a factor in 66.2% of assaults recorded in the Shire of Moora, which is above the corresponding rate for the Midlands SD (49.8%) and Western Australia (45.2%);
 - for the 12 months ending August 2015, Moora recorded 55 assaults and 43 burglaries; and
 - the rates of alcohol-related hospitalisations in the Shire of Moora for the period 2007-2011 were significantly higher for all persons (1.76 times) than the corresponding State rates;
- 21 In terms of the existing licensed premises in town, the resident objectors submit that there are four packaged liquor outlets (including the Moora Club Inc) all within a 300 metre radius of each other. In addition, nearby towns such as Walebing, 22km from Moora, has its own liquor store and Miling, 50km from Moora, has a liquor store and hotel, so neighbouring communities are serviced by these outlets which negate the need for residents of these towns to travel to Moora for Liquor.
- 22 According to the resident objectors, much of the applicant's PIA is focused on the supposed convenience of one stop shopping. However, it is asserted by the resident objectors that this already exists in town with the existing liquor store in town being located next to the IGA supermarket. Furthermore, it was submitted that a distinction must be made between the 'one-stop shopping' requirements of consumers in country towns as opposed to larger cities. In addition, it was submitted that Farmer Jacks Foodworks does not cater for all consumer shopping or service requirements, such as banks, post office, newsagency, pharmacy etc. Consumers in town will still need to access other facilities throughout Moora for many other services and can easily coordinate the purchasing of liquor at this time. To support their objection, the resident objectors submitted their own questionnaire in order to obtain the community's view on the application.

The evidence and submissions of the interveners

The Executive Director Public Health

- 23 The EDPH intervened to make representations regarding the risk of alcohol-related harm or ill-health specific to the application. The grounds of the intervention were premised on the following:
- the integration of the sale of packaged liquor alongside general supermarket goods can reinforce alcohol as a non-harmful product, and establish its cultural place as part of everyday life, shaping attitudes and behaviours towards alcohol;
 - alcohol placement alongside everyday grocery items can lead to increased consumption and harm;
 - there is existing harm occurring in Moora, with rates of alcohol-related harm higher than the State;
 - there are a number of existing liquor licences located in Moora which provide packaged liquor and increasing the availability of alcohol can increase levels of consumption and the risk of harm; and
 - if the licence is granted, the imposition of conditions that seek to separate the liquor from the general grocery items would be an important harm minimisation approach.
- 24 It was submitted by the EDPH that research has established that exposure to alcohol sale, promotion and use, particularly when presented as an ordinary commodity, sends the message that alcohol is an important, necessary part of everyday life. Consequently, the manner and context in which alcohol is made available within the community shapes and reinforces the drinking culture, impacting on the societal views on what is deemed normal in terms of drinking patterns and behaviour. The sale of alcohol from supermarket style outlets increases community access to alcohol by way of opportunistic exposure.
- 25 According to the EDPH, unlike dedicated liquor outlets, supermarkets are generally frequented by a larger and broader proportion of the population (including children) because of the daily 'need' type products for sale. Supermarkets selling liquor therefore increases the potential reach of alcohol-related harm, given the regularity of exposure to the sale and promotion of alcohol that occurs.
- 26 Concern was also expressed by the EDPH that the ability to purchase alcohol alongside general grocery items could encourage impulse or unplanned purchases. This is reinforced by research which claims that 44% of alcohol purchases are unplanned and persons most susceptible to impulse buying from an experiential perspective are persons attracted to the use of alcohol to alter their mood.

- 27 It was asserted by the EDPH that research also supports the conclusion that the sale of alcohol from supermarkets can lead to increased consumption and harm. For example, in Sweden, consumption and harm increased when beer was sold alongside grocery items and fell when the practice ceased.
- 28 The EDPH therefore submitted that the grant of the application will increase the availability of conveniently accessed liquor to the Moora Community, which already has high rates of alcohol-related harm occurring:
- between 1 January 2013 and 7 October 2015 there were 38 non-domestic assault offences of which 47.45% were recorded as alcohol-related;
 - in relation to non-domestic assault offences per 1,000 persons, the Moora locality (2.2) has rates much higher than the State rate (1.0);
 - between 1 January 2013 and 7 October 2015 there were 100 domestic assault offences of which 56% were recorded as alcohol-related;
 - alcohol-related domestic assault rates per 1,000 persons in Moora (10.4) are significantly higher than the State (2.0);
 - alcohol-related hospitalisations for Moora SA2 indicate that both short-term (resulting in acute problems such as violence and injury) and long-term (resulting in chronic disease) conditions caused by harmful drinking patterns are present, with the total hospitalisation rate for 'all alcohol-related conditions' for all Moora SA2 residents, for the period 2008 -2012, being significantly higher (1.29) than the corresponding State rate;
 - for the period 1 July 2014 to 30 June 2015, there were 43 treatment episodes (at Mental Health Commission funded alcohol and other drug treatment agencies) for person residing in Moora, of which alcohol was identified as the primary drug of concern for 41.9% of these treatment episodes and this is a higher percentage compared to Wheatbelt residents (33.7%).

The Commissioner of Police

- 29 It was submitted by the Commissioner that any additional liquor store placed into a community will inherently lead to an increase in alcohol-related harm and offending. At-risk groups, who have easy access to liquor, are susceptible to the harms caused by the abuse of alcohol and need to be protected, often from themselves. Further, domestic violence is extremely problematic in the State and is only ever detrimentally affected by the installation of new takeaway liquor outlets.
- 30 According to the Commissioner, pairing normal grocery shopping with liquor shopping normalises such purchases to those groups which are at risk. Consequently, the Commissioner was of the view that if the application is granted, conditions should be imposed on the licence to minimise the risks to community, including segregating the

liquor from the grocery area; having a separate point of sale; restricting external advertising of liquor; restricted trading hours; and the use of CCTV system.

Determination

31 In determining this application, I am guided by the following legal principles:

- the Act imposes an onus on an applicant for the grant of a licence to satisfy the licensing authority that the grant of the application is in the public interest (s 38(2)), and the burden of persuasion imposed on the applicant must be satisfied by evidence adduced in any particular case;
- an intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321);
- the burden of establishing the validity of any objection lies on the objector (s 73(10));
- in determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- the factual matters which the licensing authority is bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5;
- the licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations; and
- the licensing authority must deal with each application on its merits (s 33) but has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).

32 The primary objects of the Act, as set out in s 5, are:

- to regulate the sale, supply and consumption of liquor;
- to minimise harm caused to people, or any group of people, due to the use of liquor; and

-
- 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.
- 33 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
 - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 34 The applicant operates a supermarket in the Wheatbelt town of Moora and seeks to establish a liquor store at the front entry of the supermarket in order to provide one-stop shopping convenience for his customers, who would be able to purchase their grocery items and liquor at the one venue. The applicant estimates that the population of Moora has increased by 21% over a 15 year period (since the existing liquor store licence was granted) however, there has been no new liquor licences granted in Moora since July 1995 and this demonstrates a deficiency in the services required for the town's needs.
- 35 The applicant lodged various petitions, questionnaires and letters signed by members of the public to support his application. However, a cautionary approach should be taken to this material. The Liquor Commission has, on many occasions, expressed reservations about the weight that may be applied to surveys and petitions. This is because, among other reasons, the outcome of surveys is dependent upon the method of selection and sampling of respondents, the objectivity of the surveys and petitions, the type of questions asked, and the geographical and demographic composition and nature of the locality.
- 36 The main underlying motivation for the application would appear to be the convenience of one-stop shopping for patrons of the supermarket. However, in my view, the applicant is misapplying the concept of one-stop shopping as considered by Buss JA in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227. In this decision, Buss JA stated that it is a notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres. 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.

- 37 Although the applicant's consumer data indicates some members of the community may find it more convenient to purchase liquor at the applicant's proposed liquor store, an increase in convenience alone is insufficient to demonstrate that an application for a liquor store licence is in the public interest (refer LC 26/2014), *Liquorland (Australia) Pty Ltd v Commissioner of Police* (LC 18/2015) and *MYD Korea Pty Ltd v Director of Liquor Licensing* (LC 21/2015). Further, in LC 18/2015, the Liquor Commission stated:

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.

- 38 Catering to the requirement of consumers under object 5(1)(c) of the Act must also be considered in the context of the proper development of the liquor industry. Heenan J in *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384, said:

"Whether any particular licence application will or will not contribute to the proper development of the liquor industry or whether it will facilitate the use and development of premises in a manner which reflects the diversity of the requirements of consumers in this State are questions of fact, degree and value judgement..... I have previously concluded that the primary objects of the act set out in s 5(1)(c) are not the only or the exclusive objects of the Act and, except to the extent of any inconsistency, do not restrict considerations of the public interest required by s 33(1) or s 38(2).

Because the appellant has emphasised the potential significance of the primary objects of the Act set out in s 5(1)(c), it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with the measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it."

- 39 With this in mind, the Liquor Commission observed, in LC 18/2015:

[The] proper development of the liquor industry is not synonymous with the unrestricted expansion of liquor outlets to satisfy a desire on the part of some consumers of liquor or related services for a relatively

insignificant or inconsequential modification or improvement to the level of convenience. The long terms interests of [the] liquor industry are best served by a controlled development of the industry having regard to public perceptions of the industry and the overall health and well being of the community.

- 40 Also, the unnecessary proliferation of licensed premises would not be in the public interest. In the Second Reading Speech which accompanied the introduction of the *Liquor and Gaming Legislation Amendment Act 2006* (see *Parliamentary Debates, WA Parliament, vol 409, p 6342*) the then Minister for Racing and Gaming, the Hon. Mr Mark McGowan, stated:

“A key reform is the creation of the public interest test.... Under the public interest test, all applicants will be required to demonstrate that the application is in the public interest and the licensing authority will be required to consider the application based on the positive and negative social, economic and health impacts of the community.... it should be noted, however, that the government does not consider the proliferation of liquor outlets to be in the public interest and proliferation is not an outcome that would be supported by the public interest test.”

- 41 A further underlying premise for the grant of the application is the claimed increase in the population of Moora. The evidence from the resident objectors in that the population of Moora has not increased as claimed by the applicant. Data from the ABS indicates that the population for Moora (LGA/SLA) was 2,574 in 1996 and 2,476 in 2011, an overall decline in population. The estimated population in 2013 was 2,535. Whilst there may have been a slight increase in the population since 2006, the estimated population in 2013 was still below the population in 1996.
- 42 There are currently eight liquor outlets in Moora: a liquor store, two hotels (one of which has a drive through bottle shop), one club which can sell packaged liquor to its members, three club restricted licences which can provide liquor for consumption on the premises to members only, and one restaurant. There is no real criticism of the existing retail packaged liquor outlets in town in terms of range of product and service and there is no evidence the applicant will be providing a liquor related service or product not currently available to the public. The existing liquor store and the two hotels are located within a 300 metre radius of the applicant’s proposed premises, with the Junction Hotel, which has a drive through facility, located opposite the proposed liquor store.
- 43 Evidence from the EDPH and the objectors indicates that Moora currently experiences elevated rates of alcohol-related harm. For example, alcohol-related domestic assaults per 1,000 persons in Moora is 5 times the State rate, with 100 domestic assault offences being recorded between 1 January 2013 and 7 October 2015 of which 56% were recorded as alcohol-related; non-domestic assault offences per 1,000 persons is over twice the State rate; and alcohol-related hospitalisations are significantly higher

than the State rate. The SEIFA index indicates that Moora has a level of disadvantage with an index below the benchmark and there are at risk groups in the community.

- 44 Dr Chapman, the local medical practitioner, states that Moora has a significant degree of poverty, injury, crime and violence which are fuelled by alcohol abuse.
- 45 The applicant submits that it is highly unlikely that the grant of the application will contribute to harm or ill-health in the community. According to the applicant, "the bulk of at risk groups can be identified as being situated west of the railway line closer to the existing liquor store as opposed to only several potential at risk groups being closer to our venue." The applicant also proffered that there would be little concerns of any adverse effects towards indigenous persons as the store will not be for the consumption on the premises but only packaged for responsible adults. Furthermore, the applicant stated that with his intended manner of trade and security arrangements, it would be highly unlikely that any particular group would cause any adverse issues. The applicant essentially submits that provided he sells liquor responsibly, any negative impact that the consumption of liquor may have on the community is not his problem, and is really dependent on how the individuals may choose to consume alcohol once they have left the premises.
- 46 However, the harm minimisation object of the Act is directed at minimising harm or ill-health caused to people, or any group of people, due to the use of liquor. It is not restricted to what may just occur at licensed premises, and includes consideration of the negative consequences of alcohol abuse in the broader community. I do not accept the licensee's contention that merely because the bulk of the at-risk groups are located closer to the existing liquor store rather than his proposed premises, which in reality is only a few hundred metres away and which must also be viewed in the context of a small country town, that the grant of this application poses no risk to the wellbeing of the local community.
- 47 In respect of management practices, the Liquor Commission in Forest Road Liquor (LC 24/2012) stated:
- "Although effective management of packaged liquor outlets may be a component of addressing the health issues in relation to alcohol, it has however limited application to such components as outlet density, secondary supply, and harm that occurs in the home or place of consumption."*
- 48 In consideration of the evidence, I am of the view that the grant of the application is not in the public interest. I arrive at this conclusion for the following reasons:
- the application is essentially predicated on the concept of one-stop shopping, which the applicant has misapplied and has overstated its significance in the context of this application;

- the Act's statutory policy of regulation, and the measured approach which should be adopted, requires consideration of the broader public interest and whilst the grant of the application may provide a degree of convenience to some members of the public, this does not, of itself, satisfy the primary and secondary objects of the Act.
- not a great deal of weight should be attributed to the applicant's consumer data;
- there has been no significant increase in Moora's population as claimed by the applicant;
- the evidence of the EDPH and the objectors establishes that Moora currently experiences elevated rates of alcohol-related harm;
- in view of the existing rates of alcohol-related harm 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 availability of packaged liquor and this presents an unacceptable risk, particularly when weighed against the marginal benefits;
- the town of Moora is already well serviced with packaged liquor outlets; and
- the unnecessary proliferation of liquor outlets in Moora would not be consistent with the harm minimisation object of the Act and therefore would not be in the public interest.

49 In arriving at the above conclusion and the weight I have attributed to the evidence, I have had also had regard to the observation of the Liquor Commission in LC 21/2015, where it said:

"If convenience was seen to be meeting the "public interest" requirement, then the weight to be accorded to that factor would also need to be reviewed in the context of the proper development of the liquor industry. In that respect, the provision of liquor products in supermarkets, delicatessens, butchers, or other retail outlets where grocery items are purchased regularly, and at which it would merely be convenient to buy liquor, is viewed by the Commission as not being a sufficient reason to grant an application for a liquor store licence."

50 Consequently, I find that the applicant has failed to discharge his onus as required under s 38(2) of the Act and the application is therefore refused.

51 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.

52 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING