

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: SOUTH FREO FRESH PTY LTD
Represented by Canford Hospitality Consultants

OTHER PARTIES: COMMISSIONER OF POLICE
First Intervenor

AND

CHIEF HEALTH OFFICER
Second Intervenor

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

PREMISES: LOCO LIQUOR EXPRESS, SHOPS 10 & 11,
195 HAMPTON ROAD, SOUTH FREMANTLE

APPLICATION REFERENCE: A758380584

DECISION OF: BRETT SNELL, DEPUTY DIRECTOR LIQUOR CONTROL
AND ARBITRATION

DATE OF DECISION: 27 JUNE 2019

DATE OF REASONS: 07 AUGUST 2019

Procedural background

1. On 4 February 2019, South Freo Fresh Pty Ltd (Applicant) applied to the Director of Liquor Licensing (Director) for the conditional grant of a liquor store licence for premises to be known as *Loco Liquor Express* and situated at Shops 10 & 11, 195 Hampton Road, South Fremantle.
2. The application, which was made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (Act), was advertised in accordance with instructions issued by the Director, resulting in the lodgement of notices of intervention by the Commissioner of Police (First Intervenor) and the Chief Health Officer (Second Intervenor), pursuant to the provisions of s 69 of the Act.
3. On 27 June 2019, pursuant to ss 13 and 16 of the Act, I determined the application on the written submissions of the parties and published a notice of decision, pursuant to s 18AA of the Act, in which I refused the application after considering the evidence regarding the elevated levels of alcohol-related harm and ill-health in the locality.
4. On 3 July 2019, the Applicant requested written reasons for the notice, in accordance with s 18AA(4) of the Act. Accordingly, my reasons for refusing the application follow.
5. As this is an administrative decision, rather than referring in detail to the entirety of the evidence before me, I will set out what I considered to be the relevant material facts. Further, I have considered all of the information submitted by all of the parties and the fact that I have not referred to a specific piece of evidence in these written reasons does not mean that I have not taken it into account.

The Application

6. The application proposes a small, specialist liquor store (approximately 35m² in size) within the *South Fremantle IGA Supermarket* (supermarket) at the *South Fremantle Shopping Centre*, with some of the liquor products proposed to complement some of the supermarket's specialist stock, which includes products from Asia, India, Mexico, South Africa, UK, New Zealand and other European countries, as well as some products that are organic, gluten free and vegan.
7. Accordingly, the Applicant proposed that the liquor store would offer:
 - (a) a range of products from local microbreweries, boutique wineries, and local spirit producers that are not readily available at the group-owned liquor stores in the locality;
 - (b) gluten free and organic liquor products; and
 - (c) international wines, such as South African, French, Italian, Portuguese and Spanish.
8. The Applicant also proposed to extend the supermarket's trading hours if the liquor store licence is granted.
9. The Applicant acknowledged that the Director's *Public Interest Assessment* policy (PIA policy) defines an area of three kilometres surrounding the premises as the relevant locality¹ and identified the following suburbs as falling within the locality, either wholly or in part:
 - (a) South Fremantle;
 - (b) Beaconsfield;
 - (c) Hamilton Hill;
 - (d) White Gum Valley;
 - (e) Fremantle; and
 - (f) North Coogee.
10. However, of those six suburbs, the Applicant submitted that Hamilton Hill, White Gum Valley, Fremantle and North Coogee have only small portions within the locality and therefore excluded those suburbs from its demographic study, in which it only considered the suburbs of South Fremantle and Beaconsfield. Based on the 2016 Census data², the Applicant concluded that South Fremantle and Beaconsfield are stable and mature, with a below average representation of at-risk groups for alcohol-related harm.
11. In accordance with the PIA policy, the Applicant identified 12 existing licensed premises in the locality that can already sell packaged liquor.
12. The PIA also explained that in December 2018, the Applicant appointed a market research business, Perth Market Research (PMR), to undertake:
 - (a) 47 intercept surveys with people at the supermarket on 14 December 2018 and 16 December 2018, from 4 p.m. to 7 p.m. (with a further four questionnaires subsequently received by mail), and
 - (b) an exercise where a mystery shopper visited each of the premises identified in paragraph 11 (above) to search for nine specified liquor products, which identified that none of the outlets carried all nine products, although some of the premises had at least one of those products available.

¹ Refer s 38(4)(b) of the Act

² Prepared by the Australian Bureau of Statistics (ABS)

LOCO LIQUOR EXPRESS

13. As a result of the mystery shopper exercise, the Applicant concluded that ‘these products are not readily available in other packaged liquor outlets in the locality...’
14. The Applicant summarised the main themes of the witness responses as:
- (a) the chain packaged liquor outlets³ had cornered the market and respondents would appreciate a boutique independent store in the locality;
 - (b) respondents would appreciate the option of having organic and gluten free liquor products in the locality; and
 - (c) one-stop shopping for packaged liquor and groceries would be convenient and would save time, which would have a positive impact on amenity.
15. The Applicant also submitted that the proposal offers ‘very little potential for increased and undue harm or ill-health’, for the following reasons:
- (a) the focus of the proposed liquor store will not be on price, but rather on ‘great service’ and products from local microbreweries, boutique wineries and local spirit distillers, which are not currently represented at other liquor stores in the locality (although the Applicant acknowledged that other liquor product will also be stocked);
 - (b) it has developed robust harm minimisation strategies;
 - (c) the proposed liquor store is small by contemporary standards and will be located close to the supermarket checkouts, with only one entry and exit right in front of the cashier and consequently will be under constant and close staff supervision;
 - (d) the packaged liquor products will not be visible from the main supermarket shopping area;
 - (e) lollies or other items commonly known to attract the attention of juveniles will not be stocked at or near the checkout proposed to be licensed;
 - (f) the director and representative of the applicant company are experienced operators of liquor stores; and
 - (g) the Applicant will install a Closed-Circuit TV (CCTV) system, if the licence is granted, in accordance with the Director’s relevant policy.
16. Therefore, the Applicant concluded that there is little potential for increased harm or ill-health that could potentially result from the granting of the application, but there were very real benefits that could accrue to the residents of the locality, including convenience. Further, the Applicant also submitted that the ‘Liquor Commission is on record saying that a modest sized liquor store as part of or adjacent to an IGA supermarket is on the passive end of liquor licence approvals and granting the application will allow the Applicant to provide the locality with important packaged liquor services, which are currently lacking.’⁴

The Interventions***The First Intervenor***

17. The notice of intervention lodged by the Commissioner of Police was concerned with matters relevant to the public interest, as provided for by s 69 of the Act, including:
- (a) alcohol related harm and crime data; and
 - (b) information relating to the existing packaged liquor services available in the locality and outlet density.

³ This term is used to describe nationally branded liquor outlets, such as *Liquorland*, *BWS* and *Dan Murphy’s*

⁴ Refer *Berbar Nominees Pty Ltd v Director of Liquor Licensing* (LC 21 of 2009)

LOCO LIQUOR EXPRESS

18. In relation to alcohol-related harm and crime data in the locality, the First Intervenor submitted that:
- while the locality comprises some suburbs experiencing varying levels of harm, Fremantle and Hamilton Hill experience levels of harm and ill-health that are considerably higher than those of other suburbs, as well as both the Metropolitan and State comparative averages;
 - therefore, the premises is situated in a locality that is already susceptible to existing high levels of harm and ill-health;
 - the Applicant would have no control over the consumers of liquor, or the manner in which they consume the packaged liquor and there are significant consequential harms which occur within the domestic setting as a result of the consumption of packaged liquor; and
 - on 11 January 2019, the Director determined to refuse an application for the grant of a liquor store licence by ALDI within the same location.⁵
19. The First Intervenor also submitted that specific inquiries of police databases were undertaken to support the representations made in the intervention. Accordingly, the following tables provided an analysis of crime data on police databases between January 2016 and December 2018 for the suburbs likely to be impacted by the proposed premises. The rate per 1000 persons of the offences in the affected suburbs has also been represented, with comparative rates for the Metropolitan area and the State rate.
20. Further, the tables were broken down into alcohol and non-alcohol related offences (where the letter 'Y' indicated the presence of alcohol in the crime and the letter 'N' indicated that the presence of alcohol was not a contributing factor):

RP 1000	2016		2017		2018		Total
	Y	N	Y	N	Y	N	
Beaconsfield							
Domestic Assault	6.34	1.73	5.17	2.87	4.60	1.15	21.86
Non-Domestic Assault	5.96	0.38	2.87	0.38	5.94	0.57	16.11
Threatening Behaviour	2.31	0.38	2.68	0.96	4.79	0.57	11.69
Total	14.61	2.49	10.72	4.21	15.33	2.29	49.65
RP 1000	2016		2017		2018		Total
	Y	N	Y	N	Y	N	
Fremantle							
Domestic Assault	6.93	3.23	7.39	2.84	7.17	1.93	29.50
Non-Domestic Assault	22.30	10.05	21.16	8.99	18.08	8.64	89.22
Threatening Behaviour	9.70	3.23	10.69	3.98	12.51	4.78	44.90
Total	38.93	16.52	39.24	15.81	37.76	15.35	163.62
RP 1000	2016		2017		2018		Total
	Y	N	Y	N	Y	N	
South Fremantle							
Domestic Assault	3.73	0.31	2.50	0.94	0.31	1.56	9.34
Non-Domestic Assault	3.42	1.55	4.37	1.87	3.74	0.94	15.89
Threatening Behaviour	2.18	0.31	1.87	1.87	2.50	0.62	9.35
Total	9.33	2.18	8.37	4.68	6.55	3.12	34.59
RP 1000	2016		2017		2018		Total
	Y	N	Y	N	Y	N	
White Gum Valley							
Domestic Assault	4.49	0.96	2.53	2.21	3.79	0.63	14.61
Non-Domestic Assault	0.64	1.28	1.58	0.95	1.26	0.00	5.72
Threatening Behaviour	0.64	0.00	2.84	1.26	1.26	0.32	6.33
Total	5.78	2.25	6.95	4.42	6.32	0.95	26.66
RP 1000	2016		2017		2018		Total
	Y	N	Y	N	Y	N	
Hamilton Hill							
Domestic Assault	26.32	8.35	31.26	10.42	18.31	5.05	99.72
Non-Domestic Assault	18.94	1.93	15.16	3.47	11.05	5.05	55.60
Threatening Behaviour	11.56	2.25	13.58	1.58	10.42	0.95	40.33
Total	56.82	12.52	59.99	15.47	39.79	11.05	195.64

⁵ Refer Decision of Director of Liquor Licensing *Re ALDI South Fremantle*, dated 22 March 2019 (Application Reference: A180692358) (*Re ALDI South Fremantle*)

LOCO LIQUOR EXPRESS

RP 1000	2016		2017		2018		Total
Metro	Y	N	Y	N	Y	N	
Domestic Assault	5.41	1.55	4.50	1.33	4.32	1.20	18.31
Non-Domestic Assault	3.52	0.92	3.54	0.88	3.44	0.83	13.13
Threatening Behaviour	2.44	0.36	2.22	0.41	2.33	0.47	8.22
Total	11.36	2.82	10.27	2.62	10.09	2.50	39.66
RP 1000	2016		2017		2018		Total
State	Y	N	Y	N	Y	N	
Domestic Assault	5.82	2.62	4.90	2.63	4.81	2.56	23.33
Non-Domestic Assault	3.64	1.19	3.70	1.23	3.54	1.12	14.43
Threatening Behaviour	2.53	0.57	2.37	0.69	2.54	0.78	9.49
Total	12.00	4.39	10.96	4.55	10.89	4.46	47.25

21. According to the First Intervenor, the above data clearly demonstrated that there are elevated levels of harm occurring in Fremantle and Hamilton Hill. Further, while acknowledging a decline in the recorded levels of harm in some suburbs since 2016, the First Intervenor submitted that current levels of harm sit much higher than the Metropolitan average and Hamilton Hill experiences significantly higher than average levels of recorded domestic assault rates, where alcohol is a contributing factor.
22. The First Intervenor also submitted that in Fremantle, the only statistic lower than the State average relates to alcohol-related domestic abuse, with every other statistic significantly higher than the State average.
23. The First Intervenor submitted that the current availability of packaged liquor in the locality is also a consideration, particularly given that the number of packaged liquor outlets in the locality are already capable of catering to the requirements of consumers, with reference to the observations of the Liquor Commission in *Liquorland (Australia) Pty Ltd v Commissioner of Police*⁶, that 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 liquor related services for a relatively insignificant or inconsequential modification or improvement to the level of convenience.’
24. Accordingly, the First Intervenor submitted that while the Applicant indicated it will be providing a range of liquor not easily available in the locality, the mere convenience of the availability of some liquor products does not automatically provide justification for the grant of a licence.
25. In conclusion, the First Intervenor reiterated that it provided crime data relevant to the locality and the data revealed that there are existing high levels of harm in the locality, which may outweigh any minor benefit to the requirements of the consumer and the development of the liquor and hospitality related industries.

The Second Intervenor

26. The Intervention by the Chief Health Officer made representations regarding harm and ill-health concerns, including that:
- (a) there are at-risk groups that are likely to patronise *Loco Liquor Express*; and
 - (b) areas within the locality experience a level of disadvantage.
27. The Second Intervenor also noted, despite the Applicant’s assertion that the locality is not in a low socio-economic area, that there is a level of disadvantage with the locality and surroundings, which warranted consideration.

⁶ LC 18 of 2015

LOCO LIQUOR EXPRESS

28. According to the Second Intervenor, alcohol-related hospitalisations in the locality show that both short-term harm (resulting in acute problems, such as violence and injury) and long-term harm (resulting in chronic disease) conditions, caused by harmful drinking patterns, are prevalent in the locality.
29. The Second Intervenor also submitted that it is relevant to consider the context of the environment that the proposed liquor store will be operating in, because this will provide some reference to the potential for alcohol-related harm to occur if the application is granted. In this regard, the following information was provided on the locality surrounding the proposed liquor store:
- (a) for the period of 2011-2015, in South Fremantle:
- (i) the total hospitalisation rate for 'all alcohol-related conditions' for residents was significantly higher (1.20 times) than the corresponding State rate and overall chronic alcohol-related hospitalisations were also significantly higher than the State rate (1.39 times);
 - (ii) there were two specific alcohol-related conditions that were significantly higher than the State rate for all persons, including:
 - (1) alcoholic liver disease (2.42 times); and
 - (2) alcoholic mental health and neurological disorders (1.58 times).
 - (iii) for the same period, for male residents, alcoholic liver disease and alcoholic mental and neurological disorders were significantly higher (2.94 and 1.78 times, respectively) than the corresponding rate; and
 - (iv) for the same period, for female residents, alcoholic mental and neurological disorders was significantly higher (1.32 times) than the State rate;
- (b) for the period 2011-2015, in Fremantle:
- (i) the total hospitalisation rate for 'all alcohol-related conditions' for all residents was significantly higher (1.79 times) than the corresponding State rate;
 - (ii) the following seven alcohol-related conditions that were significantly higher than the State rate for all persons, including:
 - (1) alcoholic mental and neurological disorders (3.09 times);
 - (2) other digestive system diseases (3.07 times);
 - (3) alcoholic liver disease (2.21 times);
 - (4) self-inflicted injuries (2.01 times);
 - (5) poisoning (1.84 times);
 - (6) assaults/abuses (1.82 times); and
 - (7) other alcohol-related injuries (1.29 times);
 - (iii) for the same period, the total hospitalisation rate for 'all alcohol-related conditions' for male residents was significantly higher (1.96 times) than the corresponding State rate, with six specific alcohol-related conditions being significantly higher than the State rate:
 - (1) alcoholic mental and neurological disorders (3.65 times);
 - (2) other digestive system diseases (3.49 times);
 - (3) alcoholic liver disease (2.63 times);
 - (4) self-inflicted injuries (2.28 times);
 - (5) assault/abuses (1.95 times); and

- (6) other alcohol-related injuries (1.31 times);
- (iv) for the same period, the total hospitalisation rate for 'all alcohol-related conditions' for female residents was significantly higher (1.50 times) than the corresponding State rate, with the three-specific alcohol-related conditions being significantly higher than the State rate:
- (1) alcoholic mental and neurological disorders (2.24 times);
- (2) other digestive system diseases (2.03 times); and
- (3) self-inflicted injuries (1.83 times);
- (c) for the period 2013 – 2015, in Hamilton Hill:
- (i) overall, the total hospitalisation rate for 'all alcohol-related conditions' for all residents was significantly higher (1.23 times) than the corresponding State rate;
- (ii) overall acute and chronic alcohol-related hospitalisations for all residents were significantly higher (1.18 and 1.33 times, respectively) than the corresponding State rate;
- (iii) for the same period, the total hospitalisation rate for 'all alcohol-related conditions' for male residents was significantly higher (1.31 times) than the corresponding State rate, with acute and chronic alcohol-related hospitalisations also being significantly higher (1.28 and 1.35 times) than the corresponding State rate; and
- (d) for the period of 2013-2015 North Coogee, alcohol-related hospitalisations for residents of North Coogee was similar to the State rate.
30. In relation to the issue of disadvantage in the locality, the Second Intervenor submitted that disadvantage represents a complex mix of risk factors that increase the potential for alcohol-related harm; which is why the Director's PIA policy defines people in low-socio economic areas as an at-risk group for alcohol-related harm. Accordingly, the Second Intervenor also made representations that the increase visibility of, and access to, liquor at *Loco Liquor Express* may disproportionately increase the risk of harm to vulnerable members in the locality.
31. To establish the level of disadvantage in the locality, the Second Intervenor relied upon the 2016 data derived from the Socio-Economic Indexes of Areas (SEIFA) released by the Australian Bureau of Statistics⁷, submitting that one of the relevant six suburbs experiences a greater level of disadvantage and a lack of advantage (where a score of one equals the highest level of disadvantage), as shown in the following table:

Suburb	State Rank (decile)
South Fremantle	8
Beaconsfield	4
Hamilton Hill	2
White Gum Valley	5
Fremantle	5
North Coogee	10

32. Further, the Second Intervenor also noted that at the time of the 2016 ABS Census, two of the eight suburbs in the locality reported unemployment rates above the State rate and some suburbs in the locality also experience levels of unemployment higher than the State average, as shown in the following table:

⁷ SEIFA indices compare the relative social and economic conditions of cities, town and suburbs across Australia. The Index is calculated using a range of variables related to relative disadvantage, such as income, educational attainment, (un)employment and dwellings without motor vehicles

Suburb	Unemployment rate	Median weekly income for people aged 15 years and over
South Fremantle	7.4%	\$789
Fremantle	7.6%	\$817
North Coogee	5.2%	\$1166
Hamilton Hill	9.7%	\$608
Beaconsfield	8.1%	\$689
White Gum Valley	7.0%	\$759
Western Australia	7.8%	\$724

33. Representations were also made by the Second Intervenor that the socio-economic circumstances of communities can influence drinking behaviours which can, in turn, influence socio-economic circumstances, which can be best described as a cycle where both factors influence and impact on each other.
34. Further, while some research indicates those who experience greater socioeconomic advantage may drink at similar or higher levels than those who experience poorer socioeconomic outcomes, the latter group appears to bear a disproportionate burden of negative alcohol-related consequences and are more susceptible to harm from alcohol use.
35. The Second Intervenor also submitted that unlike dedicated liquor outlets, supermarkets are generally frequented by a larger and broader proportion of the population because of the daily 'need' type products for sale and therefore increase the potential reach of alcohol-related harm (given the regular exposure to the sale and promotion of alcohol that occur in a supermarket setting.)
36. The Second Intervenor also referenced a number of studies⁸ to demonstrate that the sale of packaged liquor can directly impact on types and levels of alcohol-related harms, including being closely and positively related to levels of assault, road crashes, breath alcohol levels of drink-drivers, vehicle accidents, alcohol-related morbidity (i.e. injury and illness), child maltreatment, injuries among young adults, domestic violence and assault, chronic disease and heavy episodic drinking.
37. The Second Intervenor also submitted that the relationship between packaged liquor sales and an increased risk of violence is also well documented in the literature, as stated by Evens *et al*⁹:

'Takeaway alcohol, sold at off-premise locations is a major source of domestically consumed alcohol. There is emerging evidence that off-premises alcohol sales are a particular risk factor for violence in domestic settings. It is worth considering that alcohol consumption in domestic environments is

⁸ National Centre for Research into the Prevention of Drug Abuse (1995). *The Measurement of Alcohol Problems for Policy Project: A first report of work in progress*. National Centre for Research into the Prevention of Drug Abuse, Curtin University, Perth, WA;
Scribner, R.A., MacKinnon, D.P., & Dwyer, J.H., (1995) The risk of assaultive violence and alcohol in Los Angeles County. *American Journal of Public Health*, 85(3), pp. 335-340, p. 338;
Freisthler, B., Gruenwald, P.J., Ring, L., & LaScala, E.A. (2008). An ecological assessment of the population and environmental correlates of childhood accident, assault, and childhood abuse injuries. *Alcohol Clin Exp Res*, 32(11), pp. 1969-1975. P. 1, 4;
Scribner, R.A., MacKinnon, D.P., & Dwyer, J.H. (1994). Alcohol Outlet Density and motor vehicle crashes in Los Angeles County Cities. *Journal of Studies on Alcohol*, 55, pp. 447-453. P.451;
Gruenewald, P.J., Freisthler, B., Remer, L., Lascala, E.A, Treno, A.J. & Ponicki, W.R. (2010). Ecological associations of alcohol outlets with underage and young adult injuries. *Alcoholism: Clinical and Experimental Research*, 34(3), pp 519-27. P.524; and
Livingston, M. (2013). To reduce alcohol-related harm we need to look beyond pubs and nightclubs. *Drug and Alcohol Review*, 32, pp. 113-114. P. 113

⁹ Evans, M., Chikritzhs, T, Allsop, S. & Rechichi, V. (2010). *Responsible takeaway alcohol hours bill 2010: A submission by the National Drug Research Institute*, National Drug Research Institute, Perth. P, 7, 8

significantly less regulated than drinking that occurs on-premises venues and public spaces.’

38. Accordingly, when considered alongside the specific features of *Loco Liquor Express*’ proposed manner of trade, the Second Intervenor submitted that the literature provides guidance regarding alcohol-related harm that may result from the introduction of a highly convenience packaged liquor outlet integrated within a supermarket.
39. In conclusion the Second Intervenor submitted that the application presents harm and ill-health concerns based on the proposal for:
- (a) liquor products to be made available within an IGA supermarket; and
 - (b) liquor and grocery items to be purchased at the same checkout, which may impact consumption and increased risk of harm or ill-health.

Further submissions of the parties

The Applicant’s further submissions

40. In response to the interventions, the Applicant submitted that:
- (a) the Second Intervenor is rightfully concerned about at-risk groups within the locality, and some areas of relative disadvantage in the locality, although it asserted that people who have alcohol problems will usually go to the store with the cheapest liquor;
 - (b) cheap bulk liquor is already available in the locality and the outlets that sell cheap bulk liquor will attract those intent on consuming cheap liquor quickly, which means that refusing the present application would have no impact whatsoever on that;
 - (c) ‘the evidence and submissions in support of the application far outweigh the material before the Director in support of the... intervention and justify the grant’;¹⁰
 - (d) that like the premises in *Redport V EDPH*, the proposed licensed premises will:
 - (i) have an extensive range and focus on the promotion of local wine and beer products from the region; and
 - (ii) have features that distinguish it from other liquor outlets;
 - (e) the confirmed minutes of the City of Fremantle Planning Committee Meeting held on 16 January 2019 found that the small scale and the location of the proposed premises within an existing shop and the provision of other nearby existing Liquor Stores of a much larger nature, was unlikely to detrimentally impact the locality;
 - (f) that the Second Intervenor failed to disclose the presence of the Fremantle Hospital, and the fact it ran an emergency department for the South Metropolitan Region until 2015 or to explain the impact of that region-wide emergency service on the treatment figures;
 - (g) that the police data put forward to back up First Intervenor’s assertions about the existing levels of harm in the locality or adjacent suburbs is unreliable and unconvincing because:
 - (i) the data provided by the Police reports on incidents, not convictions and there is no information provided to indicate how many, if any, of these incidents resulted in criminal convictions;

¹⁰ Refer *Redport Enterprises Pty Ltd v Executive Director of Public Health & Others* (LC 01/2016) (*Redport v EDPH*)

- (ii) the assessment that alcohol is involved or contributed to an offence is subjective because:
 - (1) police do not routinely test for alcohol, they make a subjective assessment at the time of the reported offence;
 - (2) whether or not the alleged presence of alcohol contributed to the offence is also a subjective assessment by the attending police officer; and
 - (3) in normal circumstances, the perpetrator of a crime has fled and the police are only left to assess the victim;
 - (h) the police offence data for the suburbs of Fremantle and Hamilton Hill is unfair because it did not take into account the large numbers of visitors to Fremantle, which is a magnet for tourists and day-trippers, therefore any comparison of the number of offences to the number of population is simplistic and skewed because rates of offending increase with increased numbers of people in a locality; and
 - (i) that according to the Supreme Court decision in respect of the National Hotel, Fremantle, it 'is not sufficient to simply reason that, where there is already a high level of harm in the particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol related harm which is likely to result from the grant of the particular application.
41. The Applicant also asserted that the present application is materially different to the *ALDI South Fremantle* application, for reasons including:
- (a) ALDI supermarkets are perceived as cheap supermarkets selling ALDI home-branded liquor products only; whereas cheap liquor is not the focus of the present application, which is concerned with supporting products from local microbreweries, boutique wineries and local spirit distillers, gluten free, additive free and organic products as well as some international wines; and
 - (b) the proposed premises are located approximately 600 m from *ALDI South Fremantle*;
42. The Applicant's further submissions also included 14 additional letters of support from local producers. By way of example, in his letter of support, Stephen Ryan, Director for Geographe Distillery, said:
- 'I wish to offer my support as both a resident of South Fremantle who frequents this store, and as a producer of premium West Australian spirits. As a small producer it is impossible to get my products on the shelves at either Dan Murphy's or Liquorland, both of which are located in South Fremantle.
- Small independently owned liquor stores however are great supporters of small producers. Quality small producers can offer products that enable independent retailers to differentiate themselves from the large liquor stores.'
43. Additionally, Mikael Gillard, a Director of Mind Spirits & Co. also indicated support for the application on the basis that the Applicant supports local and organic beverages.
44. Similarly, Daniel Turley, President of the Western Australian Brewers Association, observed that 'Naturally Fresh IGA are looking to directly support and promote local W.A. Craft Breweries, and so, the W.A. Brewers Association strongly supports their application.'
45. Further, while the Applicant submitted that it would give an opportunity to all of these local producers to stock their premium liquor products at the proposed liquor store, it reserved its right to replace those products, should they prove unpopular with customers.

The Second Intervenor's further submissions

46. The Second Intervenor's further submissions presented information on harm and ill-health concerns with alcohol integrated into supermarkets. In this regard, the Second Intervenor submitted that while some sections of the locality are defined as 'relatively affluent and stable', this does not ameliorate the risk factors presented by the proposed liquor store for those in the locality who are experiencing socio-economic disadvantage and no evidence has been provided by the Applicant to demonstrate that the liquor store will not appeal to, and will not affect, those more at-risk in the locality.
47. It was also reiterated that the intervention demonstrates that there is a level of disadvantage within the locality and surroundings and the co-location of the liquor store within the supermarket warrants consideration in the context of the risk factors present within the locality, given that alcohol is related to, and impacts upon, the social health of the community and the most vulnerable.
48. Unlike dedicated liquor outlets, such as *Dan Murphy's*, supermarkets are generally frequented by a larger and broader proportion of the population because of the daily 'need' type products for sale. This liquor store within a supermarket presents liquor as an option to those that may not have attended the outlet for that purpose but who are influenced by the convenience or promotions in store to purchase alcohol.
49. Similarly, for those who attend the IGA for grocery shopping and already experience alcohol-related harm and wish to avoid alcohol-related cues and triggers, the placement of alcohol within the IGA supermarket increases the potential for impulse purchasing by this group.

Determination

50. The Applicant sought the grant of a liquor store licence to authorise the sale and supply packaged liquor from an area inside its IGA supermarket.
51. For the reasons that follow, I was not persuaded by the Applicant's submissions and evidence that the grant of the application was in the public interest.
52. Determining whether the grant of an application is 'in the public interest' requires the exercise of a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation.¹¹ In *McKinnon v Secretary, Department of Treasury*¹², Tamberlin J observed that:

'The reference to "the public interest" appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.'

¹¹ 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

¹² [2005] FCAFC 142 (*McKinnon v Secretary*)

53. Section 33(1) of the Act provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that is in the public interest. The scope of this discretion was considered by EM Heenan J in *Woolworths Ltd v Director of Liquor Licensing*¹³ as:
- ‘...an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole. Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest to make those objects the exclusive consideration nor the sole determinants of the public interest.’
54. Additionally, in *Woolworths Ltd -v- Director of Liquor Licensing*¹⁴, Buss J observed that in determining whether it is satisfied that the granting of an application is ‘in the public interest’, the licensing authority is bound to take into account those factual matters that are relevant to the objects of the Act as set out in s 5(1) and (2).
55. Section 5(1) sets out the primary objects of the Act, which 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.
56. Section 5(2) sets out the secondary objects of the Act, which are:
- (a) 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; and
 - (b) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - (c) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act; and
 - (d) to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.
57. Section 16 of the Act requires that each application is considered on its merits and determined on the balance of probabilities. However, when determining the merits of an application, tension may arise between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services. When such circumstances arise, Ipp J observed in *Executive Director of Health -v- Lily Creek International Pty Ltd & Ors*¹⁵ that the licensing authority is required to weigh and balance those competing interests. Where harm and ill-health is a relevant factor, the approach the licensing authority must adopt

¹³ [2012] WASC 384 (*Woolworths v DLL* (2012))

¹⁴ [2013] WASCA 227 (*Woolworths v DLL* (2013))

¹⁵ [2000] WASCA 258 (*Lily Creek No 1*)

was further outlined by Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*.¹⁶

58. While there is a positive onus on an applicant to discharge its obligation under s 38(2) of the Act¹⁷, an intervenor carries no onus to establish their assertions of fact or opinion, but rather provides representations to assist the licensing authority to make an informed decision.¹⁸
59. Therefore, the statutory duty imposed on the licensing authority involves two aspects:
- (a) first, evaluating the evidence before it, making findings and drawing conclusions from the evidence, including by inference; and
 - (b) secondly, applying the public interest criteria, in accordance with the statutory requirements, to the relevant circumstances of the case before it and in particular, to the findings it has made and the conclusions it has drawn.¹⁹
60. The Applicant lodged copies of the 51 consumer questionnaires, which it relied on to demonstrate that the application would advance object 5(1)(c) of the Act. However, I have noted that the Applicant's consumer evidence clearly showed that:
- (a) some consumers failed to indicate whether they would purchase the Applicant's specialist liquor products; and
 - (b) other licensed premises in the locality, such as *The Freo Doctor Liquor Store* and *Liquorland South Fremantle*, already sell boutique and organic liquor products,
- which I consider, undermines some of the primary contentions made by the Applicant.
61. I also consider that the value of the Consumer Evidence was diminished because the Applicant advised consumers in its Consumer Questionnaire that the trading hours of the supermarket would be extended if the licence was granted. Consequently, I consider that interests of some consumers in extended supermarket trading hours is mixed together with the support of other consumers for the grant of the licence, when in fact they are two separate and distinct matters. In my view, the trading hours of the supermarket are largely irrelevant to whether or not the grant of the licence is in the public interest.
62. In relation to the letters of support from the various producers referred to in paragraph 42 (above), I note that much of that support was based on the fact that the grant of the application may benefit those other businesses, which are essentially Economic Benefit considerations, as described by McGrath J in *Commissioner of Police -v- Australian Leisure and Hospitality Group Pty Ltd* ²⁰, in the sense that those producers supported the Applicant because the Applicant is supportive of the producers (through its intention to stock their locally produced wine, beer and cider.) However, in accordance with the further observations of McGrath J in *COP v Australian Leisure and Hospitality Group*, I noted that it is impermissible for the licensing authority to take Economic Benefit considerations into account as part of its public interest considerations. Therefore, I cannot afford any weight to the letters of support from the relevant producers.
63. Likewise, I cannot give any weight to the Applicant's submissions regarding the proposed specialist liquor products not being represented at 'chain-stores' or other packaged liquor outlets in the locality.

¹⁶ [2015] WASC 208 (*Carnegies v DLL*)

¹⁷ Refer *Liquorland (Australia) Pty Ltd v Executive Director of Health* [2013] WASC 51; *Seoul Mart City Pty Ltd v Commissioner of Police* (LC27/2014)

¹⁸ Refer Greaves J, *Re Gull Liquor* (1999) 20 SR (WA) 321

¹⁹ Refer *Woolworths v DLL* (2013)

²⁰ [2019] WASC 114 (*COP v Australian Leisure and Hospitality Group*)

LOCO LIQUOR EXPRESS

64. However, when I consider the 51 consumer questionnaires lodged by the Applicant, I find that the grant of the application would provide customers of the Applicant's IGA supermarket with a level of convenience and would therefore promote object 5(1)(c).
65. A finding that the grant of a licence would provide convenience for consumers is not, on its own, determinative of the application. This is because the proper construction of object 5(1)(c), as discussed by Bank-Smith J, in *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*²¹:
- (a) requires that regard be directed to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in considering the issue of catering for consumer requirements; and
 - (b) does not diminish the role of the other objects of the Act.
66. One of the other primary objects of the Act is the minimisation of harm or ill-health caused to people, or any group of people due to the use of liquor.²² While none of the primary objects of the Act take precedence over the others, where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case²³ and it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.²⁴
67. As mentioned in paragraph 57 (above) where object 5(1)(b) is relevant to the determination of an application, the licensing authority must undertake the following four steps:²⁵
- (a) make findings that specifically identified the existing level of harm and ill-health in the relevant area due to the use 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 other relevant factors to determine whether the applicant has satisfied the licensing authority that it was in the public interest to grant the application.
68. In this regard, evidence has been presented by the parties on the economic and social profile of the locality surrounding the proposed liquor store, with the evidence from the Intervenor, as detailed at paragraphs 19 and 29 (above), indicating that the locality surrounding the proposed liquor store currently experiences rates of alcohol-related harm significantly above the State rates.
69. Further, while the Applicant sought to limit the demographic analysis of the locality to only South Fremantle and Beaconsfield, I consider that its own consumer evidence clearly shows that it derives a majority of its custom (51% of respondents) from people who live elsewhere in the locality²⁶, with:
- (a) 21% of respondents declaring that they reside in Fremantle;
 - (b) 8% in North Coogee;

21 [2017] WASC 88 (*Australian Leisure and Hospitality Group Pty Ltd v Police*)

22 Refer s 5(1)(b) of the Act

23 Refer *Lily Creek No 1*

24 Refer *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356

25 Refer *Carnegies v DLL*

26 Additionally, a further 6% of respondents failed to disclose where they reside

LOCO LIQUOR EXPRESS

- (c) 6% in White Gum Valley;
- (d) 4% in Hamilton Hill;
- (e) 4% in Munster;
- (f) 2% in East Fremantle;
- (g) 2% in Byford;
- (h) 2% in Murdoch; and
- (i) 2% in Spearwood.

70. Accordingly, I prefer the representations of the intervenors and consider that the Applicant's demographic analysis of the locality should have included the other suburbs falling within a three-kilometre radius of the proposed premises, particularly given that the Director's PIA policy recommends that 'In addressing social health indicators, applicants should also consider the proximity of the premises to bordering suburbs.'

71. I also accept the representations of the Second Intervenor that there is a body of evidence that establishes a correlation between an increase in outlet density and an increase in alcohol related harm, as referred to in the materials submitted in support of the relevant intervention. In arriving at this view, I am aware that research evidence must be considered with regard to the proven circumstances of the particular locality in which the licensed premises is to operate, as stated by Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors*²⁷ and Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor*²⁸ (having quoted Wheeler J in *Lily Creek No 2*):

'...by its very nature, much evidence about harm minimisation will be general and expert in nature. It may be epidemiological or sociological, to name just two of the different disciplines which may be involved. It will not necessarily be evidence relating directly to the particular premises, neighbourhood or locality concerned. It may nonetheless be relevant and admissible, for it may, depending on the circumstance, assist in determining the likelihood that harm is occurring or will occur, the nature of that harm and what contribution can be made to minimising it. Such evidence may be especially important where it is connected by other evidence with the 'particular local, social, demographic and geographic circumstances' of the given case.'

72. In response to the representations of the Intervenor, the Applicant sought to downplay the value of the harm data by asserting that:

- (a) 'at-risk' groups and people who have alcohol problems will usually go to the store with the cheapest liquor; and
- (b) refusing the present application would have no impact on harm as cheap bulk liquor is already available in the locality.

73. Further, the Applicant also asserted that harm data presented by the First Intervenor is unreliable and unconvincing because:

- (a) it is based on incidents and not convictions, the assessment that alcohol is involved is a subjective one on the part of police and in normal circumstances, the perpetrator of a crime has fled the scene of the crime and police are only left to assess the victim; and

²⁷ [2001] WASCA 410 (*Lily Creek No 2*)

²⁸ [2011] VSC 207

LOCO LIQUOR EXPRESS

- (b) the offence data for Fremantle and Hamilton Hill is unfair, because it failed to take into account the large numbers of visitors to Fremantle, which would skew the statistics, because rates of offending increase with increased numbers of people in a locality.
 - (c) that according to the Supreme Court decision in respect of the National Hotel, Fremantle, it 'is not sufficient to simply reason that, where there is already a high level of harm in the particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol related harm which is likely to result from the grant of the particular application.
74. Similarly, the Applicant sought to undermine the:
- (a) harm data presented by the Second Intervenor on the basis that it had failed to disclose the presence of the Fremantle Hospital and its impact on the harm data; and
 - (b) offence data presented by the First Intervenor on the basis that it was 'unfair' due to the large number of visitors to Fremantle, which is a 'magnet for tourists and day-trippers', I note the Director's PIA policy includes communities that experience high tourist numbers as being at-risk to being more vulnerable to the impact of alcohol and consider that the Applicant should have considered this factor in its PIA.
75. I thought this approach was counterintuitive, particularly after the Applicant acknowledged in its further submissions that the Second Intervenor was 'rightfully concerned about at-risk groups within the locality, and some areas of relative disadvantage...'
76. In my view, the harm data presented by the Intervenors is persuasive and it is not sufficient for the Applicant to attempt to dismiss such evidence based merely on its own unsubstantiated views. I have noted that the Applicant freely acknowledged that Fremantle and its surrounds are popular destinations for tourists and day-trippers, I would have expected the Applicant to have anticipated high hospitalisation rates and crime data and factored these issues into its demographic analysis of the locality. Further, given the licensing authority's findings in relation to Fremantle and its surrounds in other determinations, such as *Carnegies v DLL* and *Re ALDI South Fremantle*, which were both referenced by the Applicant, I do not think it is surprising or unanticipated that evidence of alcohol-related harm would be introduced by the Intervenors.
77. Accordingly, I find that there is a high level of pre-existing alcohol-related harm in the in the locality surrounding the proposed liquor store. In addition, I consider there are other risk factors present in the locality, that are relevant when assessing the vulnerability of the community to the likely negative impacts of alcohol use and the likely degree of harm to result from the grant of the application. These factors include:
- (a) harms associated with packaged liquor sales usually occur away from the licensed premises and at a later time and place, irrespective of the licensee's ability to maintain and adhere to regulatory requirements at the point of sale;
 - (b) the harm contemplated by the Act not being confined to consumers of alcohol and extending to harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm; including harm which may occur through an increase in anti-social or injurious behaviour due to the use of liquor and is not limited to physical harm²⁹;
 - (c) the grant of the application may put downward pressure on the price of packaged liquor in the area, which is particularly relevant given that the Applicant identified 12

²⁹ *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321 and *Kordister supra*

- existing packaged liquor outlets that are already authorised to sell packaged liquor in the area;
- (d) the suburbs of Hamilton Hill and Beaconsfield:
 - (i) having below average SEIFA rankings, which demonstrates that these suburbs are socio-economically disadvantaged; and
 - (ii) experiencing high rates of unemployment and lower median weekly incomes than the relevant State rates;
 - (e) significantly higher than average levels of domestic assault being recorded in Hamilton Hill; and
 - (f) significantly higher hospitalisation rates for 'all alcohol-related conditions' than the corresponding State rate for the suburbs of South Fremantle (1.20 times), Fremantle (1.79 times) and Hamilton Hill (1.23 times), with a number of specific alcohol-related conditions also being significantly higher in those suburbs than the State rate, including:
 - (i) alcoholic liver disease;
 - (ii) alcoholic mental health and neurological disorders;
 - (iii) self-inflicted injuries;
 - (iv) poisoning;
 - (v) assaults/abuses;
 - (vi) other alcohol-related injuries;
 - (vii) other digestive system diseases; and
 - (viii) overall acute and chronic alcohol-related hospitalisations.
78. Whether harm or ill-health will, in fact, be caused to people, or any group of people, due to the use of liquor is essentially a matter of prediction. However, it is not necessary to establish on the balance of probabilities that harm or ill-health will be caused to people, or any group of people, before that consideration can be taken into account. The potential for harm or ill-health is to be considered by the licensing authority, irrespective of whether the prospect is a possibility or a probability. It is a powerful public interest consideration.³⁰
79. Therefore, when I considered all the information before me, I concluded that it is highly likely, on the balance of probability, that the grant of the application will, in due course, contribute to the high rate of alcohol-related harm that presently exists in the locality. This includes that at-risk persons from the suburbs of Beaconsfield and Hamilton Hill being attracted to the Applicant's IGA supermarket, given that:
- (a) the Applicant intends to market liquor products along with its grocery offer;
 - (b) as noted by the Second Intervenor, ease of access and visibility of alcohol products can contribute to consumption levels and related harm; and
 - (c) the IGA supermarket is acknowledged by the Applicant to be 'popular' due to its unique grocery lines, where at-risk persons will then be exposed to the risk of unplanned or opportunistic purchases from the proposed liquor store, given that it will be located inside the supermarket and close to the checkouts.
80. Additionally, I concur with the representations of the Second Intervenor that the increased availability and access to liquor in a supermarket setting may disproportionately increase the risk of harm to vulnerable members of the locality *in a community that is already experiencing high rates of alcohol-related harm with large areas of social disadvantage*

³⁰ Refer Executive Director of Public Health v Lily Creek International & Ors [2001] WASCA 410

[emphasis added]. While this issue may not be relevant to every application, given that harm data for some parts of the locality is significantly higher than that of the Metropolitan or State rates, I find that access to liquor in the Applicant's IGA supermarket may disproportionately increase the risk of harm to vulnerable members of the locality. Accordingly, I find that the grant of this application will increase the physical availability of alcohol in a locality that is already well serviced with 12 existing packaged liquor outlets. Further, I also find that the consumer evidence establishes that consumers in the locality are presently well catered for with respect to access to packaged liquor from a range of licensed facilities, including boutique, independent and destination liquor stores; as well as liquor stores located in shopping centres and hotels and taverns.

81. In my view, the Applicant gave little consideration to the existing liquor outlets, apart from whether or not they stocked the Applicant's proposed range of 9 specialist liquor products.
82. I also find the Applicant's reliance on the findings of the City of Fremantle's Planning Committee to be misplaced, given the observations of Hall J in *Kapinkoff Nominees Pty Ltd -v- Director of Liquor Licensing*³¹:

'In the present case the Commission accepted that the appellant had obtained all relevant planning approvals and took this into account in support of the application. However, it was then necessary for the Commission to go on to consider whether granting the application was in the public interest. In this regard the considerations in s 38(4) were matters that may well have been considered by the planning authority but that does not obviate the need for the licensing authority to consider those matters itself. A decision made by the licensing authority on a matter within its discretion including matters relating to amenity by simply applying a planning decision made by the planning authorities, rather than determining the merits of the application of the Act, would be invalid...'

83. I have also noted the relevance on the Director's decision in *Re: ALDI South Fremantle*, which refused an application for the grant of a liquor store in the same locality by ALDI Foods Pty Ltd, because it was not in the public interest due to the high rates of alcohol-related harm being experienced in some parts of the surrounding locality.
84. In relation to this, I noted the Applicant's assertion that the present application is materially different to the *ALDI South Fremantle* application, for reasons including:
- (a) the Director's comments that ALDI supermarkets are perceived as cheap supermarkets and because of the availability of low-priced liquor from ALDI liquor stores, whereas cheap liquor is not the focus of the present application, but rather specialised liquor products to match the supermarket's specialised grocery products;
 - (b) the proposed premises being located approximately 600 m from the premises proposed in the *ALDI South Fremantle* application;
 - (c) the Applicant's focus in the present application is supporting products from local microbreweries, boutique wineries and local spirit distillers, gluten free, additive free and organic products as well as some international wines, whereas the *ALDI South Fremantle* application was only concerned with selling its home branded liquor products only; and
 - (d) the mystery shopper report showed that *Loco Liquor Express* will offer products that are not available elsewhere in the locality.

³¹ [2010] WASC 345

LOCO LIQUOR EXPRESS

85. However, in my view, 600 m is not a convincing distance, particularly given that it is an easy distance to traverse and both premises are located on Hampton Road and in the same locality. Further, while the Applicant asserted that it will not promote cheap liquor, no evidence was introduced by it in relation to the price point of its proposed liquor products. Similarly, while the Applicant sought to differentiate the proposed liquor store from existing packaged liquor outlets in the locality by the stocking of nine specialist liquor products, I have noted that the Applicant:
- (a) also intends to stock approximately 192 varieties of wine and lodged a sample planogram for beers, ciders and spirits, featuring well over 200 proposed products, including a significant number of mainstream liquor products; and
 - (b) reserved its right not to stock those nine specialist liquor products if they proved not to be popular with consumers.
86. Accordingly, it is my view that:
- (a) the number of proposed specialist liquor products is minimal when compared to the overall proposed stock of the liquor store and therefore do not effectively differentiate the proposed liquor store from existing packaged liquor outlets in the locality; and
 - (b) none of the specialist liquor products are guaranteed to be long standing products of the proposed store.
87. In my view, these factors also have relevance to potential alcohol-related harms arising from the grant of the licence, given the probability that the proposed liquor store may in fact not be different to any other mainstream liquor store in the locality. Therefore, it is my view that the Director's findings in *Re ALDI South Fremantle* have relevance to these proceedings.
88. In circumstances where there is already a high level of alcohol-related harm in the community, it may be that even the smallest risk of a further increase in harm will be considered not acceptable. Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health*³² stated:
- ‘In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level. It may be that where an existing level of risk is greater, a small increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing ‘at risk’ persons who might be further affected.’
89. Accordingly, it is my view that it is likely that over time, that liquor sold and supplied from the Applicant's premises will contribute to the already high rates of alcohol-related harm being experienced in some parts of the surrounding locality. I do not accept the Applicant's submission that the low risk features of its application will sufficiently mitigate the risks associated with the grant of this application.
90. Consequently, when I weighed and balanced the positive and negatives aspects of this application, in the context of the public interest considerations, I formed the view that the likely negative outcomes for this locality, given the existing high rates of alcohol-related harm and the presence of other risk factors outweighed the marginal benefits that the grant of the licence would have for customers of the Applicant's IGA supermarket. As I have already observed, the locality is presently well catered for in terms of access to packaged liquor.

³² [2013] WASC 51

LOCO LIQUOR EXPRESS

91. In consideration of the evidence presented, and the findings I have made about the locality surrounding the proposed liquor store, I concluded that the applicant had failed to discharge its onus under s 38(2) of the Act and satisfy me that the grant of the application was in the public interest. The application was therefore refused.
92. 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.
93. This matter has been determined by me under delegation pursuant to s 15 of the Act.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING



Department of
**Local Government, Sport
and Cultural Industries**

Your Ref:

Our Ref: A758380584

Enquiries: Richard Duncan
☎ (08) 6551 4810

Mr P Cockman
Canford Hospitality Consultants Pty Ltd
PO Box 389
GUILDFORD WA 6935

Dear Mr Cockman

**APPLICATION FOR THE CONDITIONAL GRANT OF A LIQUOR STORE LICENCE:
LOCO LIQUOR EXPRESS**

I refer to your correspondence of 3 July 2019, in which you sought reasons in respect of the notice of determination issued in respect of the application on 27 June 2019 and attach hereto a copy of the relevant reasons.

Should you have any enquiries regarding this matter, please contact me on telephone number (08) 6551 4810.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Duncan', with a long horizontal flourish extending to the right.

Richard Duncan
CUSTOMER SERVICES OFFICER – LIQUOR CONTROL AND ARBITRATION

07 August 2019

[Enc]