

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: RICHMONT INVESTMENTS PTY LTD

PREMISES: TOODYAY IGA LIQUOR

PREMISES ADDRESS: SHOP 3, 4 PIESSE STREET, TOODYAY

APPLICATION ID: A000056669

NATURE OF MATTER: **APPLICATION FOR THE CONDITIONAL GRANT OF A LIQUOR STORE LICENCE**

DATE OF DETERMINATION: 11 MAY 2015

Introduction

1. This is an application, pursuant to ss 41 and 62 of the *Liquor Control Act 1988* ("the Act"), by Richmond Investments Pty Ltd ("the Applicant") for the conditional grant of a liquor store licence for premises to be known as *Toodyay IGA Liquor* and situated at Shop 3, 4 Piesse Street, Toodyay.
2. The application was advertised in accordance with instructions issued by the Director of Liquor Licensing, which resulted in the lodgement of:
 - (a) a notice of intervention by the Commissioner of Police ("the Commissioner") pursuant to the provisions of s 69 of the Act; and
 - (b) notices of objection from Mr Laurie James, Mr Robert Adair, Mr Richard Taylor and Ms Julie Robertson.
3. To give effect to the provisions of s 16 of the Act, a document exchange was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case.
4. Pursuant to the provisions of ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties, which are summarised below.

Submissions of the Applicant

5. According to the Applicant, the town of Toodyay, which is located in the Avon Valley, is a major tourist destination with numerous attractions for both 'day trippers' and 'overnighters'.
6. While acknowledging that there are three licensed premises within close vicinity of the proposed premises that are currently authorised to sell packaged liquor, namely:
 - (a) Freemasons Hotel, operating under a hotel licence;

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- (b) Victoria Hotel, also operating under a hotel licence; and
- (c) The Stable Liquor Store, which operates under a liquor store licence,
- the Applicant submitted that only The Stable Liquor Store has a dedicated packaged liquor facility, that is also permanently staffed and readily accessible to the public.
7. The Applicant further submitted that none of the existing licensed premises in the town can offer the convenience of one stop shopping, which is not currently available in Toodyay and has caused economic leakage to other towns, such as Northam and Midland.
8. The proposed liquor store will be part of the existing Toodyay IGA supermarket, with entrances from both within the supermarket and externally, which the Applicant submitted will enhance the shopping experience for residents and visitors to Toodyay. The Applicant also cited an IBA study to show that an increase in supermarket turnover is achieved when a liquor store is integrated with a supermarket, which found that “liquor as an add-on department appears to be responsible for an increase in sales in the order of 10%.”
9. As such, the Applicant submitted that an increase in sales would be beneficial for other businesses in Toodyay and the whole of the Shire because:
- (a) instead of losing business to Northam, Mundaring and Midland, residents will spend money in town; and
- (b) the business will attract customers from other towns who seek the convenience of one-stop shopping.
10. It was also submitted that the Applicant’s existing supermarket business attracts customers from a wide catchment area of smaller country towns, such as Dowerin, Goomalling, Calingiri, Bolgart, Bindoon and Baker’s Hill and is trading 30 per cent more than it was three years ago, with current weekly customer counts of 6,700, which represents an increase of 2,500 customers per week over three years.
11. The Applicant also made submissions regarding:
- (a) the nearest supermarket being located 30km away in Northam and then 54km away in Chidlow; and
- (b) the fact that it also owns a freight business, which will enable the offering of a wider variety of products, with more affordable pricing.
12. The Applicant’s Public Interest Assessment (“PIA”) also considered how the grant of the application would further the objects of the Act (see s 5) as well as those matters prescribed in s 38(4) of the Act.

13. In its analysis of the licensed premises in Toodyay, the Applicant submitted that:
 - (a) the packaged liquor service at the Victoria Hotel is provided from behind the bar;
 - (b) while the Freemasons Hotel has a dedicated area for the sale of packaged liquor, most of the stock is located behind the bar, which makes for difficult browsing, with limited stock available for purchase at the bar, which is often left unattended; and
 - (c) The Stables Liquor Store is short on stock and has a monopoly in the town.
14. In order to establish that the grant of the licence will cater to the needs of consumers for liquor and related services (refer s 5(1)(c) of the Act), the application was accompanied by 37 witness statements and 145 witness petitions, although other witness statements and letters of support were also lodged during the processing of the application.

Representations of the Commissioner

15. The representations of Commissioner focused on public harm and/or disturbance likely to result if the licence is granted and conditions are not imposed; and on other matters relevant to the public interest.
16. The Commissioner submitted:
 - (a) the Applicant's PIA relies heavily on positive comments and petitions from members of the public to support its application; and
 - (b) that 19 pages of the PIA are dedicated to reaffirm positive statements, with many public comments repeated two or three times, possibly to detract from the deficiencies of the PIA in other required areas.
17. In this respect, the Commissioner submitted that the PIA failed to address the provisions of s 38(4) of the Act in that the Applicant overlooked the impact of the grant of the application on alcohol-related harm or ill-health that might be caused to people in the locality, particularly given that there are alcohol-related issues within Toodyay that the PIA fails to address.
18. Furthermore, where the Applicant did identify 'at risk' groups within the community, such as Aboriginal people, children and young people and people with co-occurring mental health and drug related problems, the Commissioner submitted that it failed to identify responsible service of alcohol strategies to deal specifically with these at-risk groups. Similarly, the Commissioner submitted that the Applicant failed to address existing instances of alcohol-related harm in Toodyay and to acknowledge the "significant domestic violence problem in the town" and to provide strategies to address or manage this issue.

19. Evidence of alcohol-related harm and offences in Toodyay between the dates of 1 January 2013 and 23 March 2014 was submitted by the Commissioner, which reported 107 incidents involving acts of family domestic violence (as defined in s 6 of the *Restraining Orders Act 1997*) of which 35 (or 33%) involved the use of liquor and 22 or (20%) resulted in the recording of an offence. The Commissioner also submitted that 15 non-domestic assaults within the same time period also involved the use of liquor.
20. Additionally, representations were also made by the Commissioner that between the dates of 1 January 2013 and 31 December 2013, there were 146 instances of anti-social behaviour, domestic violence and disturbances within the Town of Toodyay.
21. In relation to the Applicant's assessment of the existing licensed premises in Toodyay and, in particular, The Stables Liquor Store, the Commissioner submitted that statements such as "its out on its own" or "on the day of the visit this liquor store was a bit short on stock" are simply the Applicant's personal views to support its contentions that there are limited packaged liquor suppliers in the town and should be given no evidentiary weight.
22. In conclusion, the Commissioner submitted that the Applicant has so focussed on demonstrating the consumer support for the application that it did not consider other significant areas required by ss 5 and 38 and has therefore failed to discharge its onus under s 38(2) of the Act.
23. However, notwithstanding this view, a number of conditions were recommended for imposition on the licence, should it be granted.

Submissions of Mr Laurie James

24. Mr James' objection is based primarily on his view that there is already enough choice in the liquor market in Toodyay, particularly given the town's levels of domestic violence and juvenile disruptions. Although Mr James does not specify what ground of objection he relies upon, as required by s 74(1) of the Act, I have presumed that his objection is that the grant of the licence would not be in the public interest (s 74(1)(a) of the Act refers). In this regard, while Mr James noted that while there may be community benefits associated with having a viable supermarket, these benefits should be shared over a spread of businesses, which is the basis of small town structure.
25. Mr James also questioned the veracity of the Applicant's witness petitions/statements, which he submitted were "poorly developed" and only presents one side of the issue.

Submissions of Mr Robert Adair

26. The objection by Mr Robert Adair is that the grant of the application would not be in the public interest (s 74(1)(a) refers), because:

- (a) there are too many liquor outlets in Toodyay for a town with a small population of only 1300 persons living within the town limits (and approximately 4500 persons living within the entire Shire), particularly given that the Shire borders on to several other shires, which gives the population of Toodyay access to liquor merchants in Northam, Goomalling, Bullsbrook and Jennacubbine;
- (b) the proposed premises is in close proximity (i.e. within 150 m) to existing liquor outlets, including two hotels, a restaurant and a liquor store;
- (c) an additional licence would have an adverse effect on the population of the Toodyay, particularly given that the mooted economic benefits would at best be dubious if it resulted in a diminution of existing services or jobs;
- (d) in his experience as a relationship counsellor, Mr Adiar noted that 90 per cent of his clients have alcohol related issues and therefore submitted that the social impact of granting another licence in the Toodyay would be of concern; and
- (e) police callouts for Toodyay include a high percentage of alcohol related incidents.

Submissions of Mr Richard Taylor

27. Mr Richard Taylor submitted that the grant of the application would not be in the public interest (refer (s 74(1)(a)) based on his experiences as a clinical psychologist practicing in outpatient clinics in the Wheatbelt area, including Toodyay. In this regard, Mr Taylor submitted that through his professional consulting practice he is aware of widespread problems relating to the abuse of alcohol and its impact on both individuals and families. Mr Taylor submitted that:

“Extensive clinical experience in the Wheatbelt suggest that adolescent drug and alcohol use is a major public health issue. It has been established in the empirical literature that there is a clear association between adolescent drinking with weekly exposure to advertising in store and with possession of alcohol promotion items (reference: *Alcohol and Alcoholism* (2007), 42(2) pp 143-149).”

28. Mr Taylor also referenced a Perth-based study, which found that participants with greater access to liquor stores were more likely to consume alcohol at harmful levels and to have had hospital contact for anxiety, stress or depression and noted that care needs to be taken in the light of the negative effects of alcohol access in local communities.
29. Based on observations gained from his clinical experience and the evidentiary value of the empirical literature, Mr Taylor submitted that adolescents are a risk taking and susceptible group where alcohol and drugs are concerned and that exposure to alcohol advertising will further increase the vulnerabilities of both children and adolescents and result in alcohol abuse and co-morbid mental disorders.

Submissions of Julie Robertson

30. Ms Julie Robertson is the licensee of The Stables Liquor Store and objects to the application on the grounds that the grant of the application would:
- (a) not be in the public interest (refer s 74(1)(a));
 - (b) cause undue harm or ill-health to people or any group of people, due to the use of liquor (refer s 74(1)(b)); and
 - (c) be contrary to the Act (refer s 74(1)(j)).
31. Ms Robertson submitted that the grant of the application would not be in the public interest because:
- (a) there has been no change in circumstances since the Applicant's earlier application was refused in 2010 that would justify the grant;
 - (b) there are a range of venues within walking distance of the proposed store capable of selling packaged liquor;
 - (c) the evidence provided by the Applicant is not independent, objective or representational of the public and cannot be said to establish that the grant of the licence is in the public interest;
 - (d) there is significant opposition to the grant of the licence from local community members; and
 - (e) the Applicant is motivated by its own private interests rather than the public interest.
32. Ms Robertson submitted that while the Applicant has suggested there is scope for the proposed premises as a result of the Victoria Hotel not proceeding with its approved alteration for the addition of a drive through bottleshop, a more appropriate way of viewing this matter is as evidence that there are insufficient consumer requirements in Toodyay for another liquor outlet.
33. In relation to other packaged liquor outlets in the locality, Ms Robertson submitted that despite the Applicant's attempt to make out that there are insufficient packaged liquor outlets in Toodyay which has led to higher prices and The Stables Liquor Store having a monopoly on packaged liquor sales, the facts do not support such a finding, given that:
- (a) the Freemasons Hotel, located approximately 40m from the proposed premises, is authorised to sell packaged liquor;
 - (b) the Victoria Hotel, located approximately 120m from the proposed premises, is authorised to sell packaged liquor; and

- (c) The Stable Liquor Store, located approximately 155m from the proposed premises is authorised to sell packaged liquor.
34. Ms Robertson also submitted serious concerns over the objectivity of some of the people who provided evidence in favour of the application, which included people who are personally linked to Mr Dean Patrick Carter, the sole director of the Applicant, such as Mr Carter's father-in-law, brother-in-law, as well as ex-employees who are personal friends with Mr Carter, as well as tenants of Mr Carter's rental properties.
35. Ms Robertson also noted the Applicant's statement that the weekly customer count at the Toodyay IGA Supermarket is 6,700 and extrapolated that, during the month of December 2013 when the petition was available at the supermarket for patrons to sign, 26,800 customers would have visited the store and yet only 144 persons signed the petition. As such, Ms Robertson concluded that only a small proportion of customers were in favour of the application, particularly given the Applicant's admission that it only requested customers to sign the petition "if they supported the application for the licence."
36. Ms Robertson further submitted that the Applicant's approach of only canvassing for positive responses, as opposed to actually gauging the public's overall opinion of the proposal, undermines the independence and objectivity of this evidence. Similarly, it was also submitted that such targeted responses cannot be said to be a "representative selection of people who live, work, visit or otherwise resort to the Town of Toodyay" as claimed in the Applicant's PIA.
37. To illustrate the fact that there is a level of community opposition to the application, Ms Robertson lodged a copy of her own Customer Catchment Survey, conducted between 30 May 2014 and 25 June 2014, which showed that from a total of 198 respondents, 191 persons (96%) indicated that they were opposed to the grant and 169 respondents (85%) indicating that alcohol-related harm or ill-health within the community may worsen if the liquor store is granted.
38. Ms Robertson also questioned the Applicant's motivation, particularly after noting that the PIA addressed 'in some detail' the private commercial benefits that it says will stem from the grant of the licence, especially as referenced in the IBA study.
39. In relation to the third ground of objection regarding the grant of the application being contrary to the Act, Ms Robertson submitted that the Applicant has:
- (a) failed to fulfil its advertising obligations;
 - (b) failed to comply with the licensing authority's PIA Policy;
 - (c) incorporated inaccurate statistics within its PIA; and
 - (d) made numerous statements within its PIA which are either inaccurate or misleading.

Responsive and closing submissions

The Applicant's submissions

40. The Applicant submitted that the public interest identified in the application relates to demand and the creation of competition in the town and trying to keep retail business within the Shire of Toodyay, so that people don't have to drive to Northam or Midland to buy their packaged liquor requirements.
41. In relation to addressing alcohol-related harm, the Applicant submitted that its strategies include:
 - (a) expansion of an existing CCTV system out to the front of the IGA supermarket, so that there will be 24 hour surveillance available for the police or other relevant authority to access if required;
 - (b) the location of entry and exit points in public areas and close to the supermarket checkouts for easy monitoring and as a deterrence to anti-social behaviour;
 - (c) curtailing the permitted trading hours to match the trading hours of the supermarket;
 - (d) brightly lighting the proposed liquor store and incorporating an easily monitored retail space, incorporating the principles of Crime Prevention through Environmental Design ("CPTED"); and
 - (e) the development of a Harm Minimisation Plan in support of the application.
42. The Applicant further submitted that while it did consider the impact the grant of the licence may have on the amenity of the locality, in the context of this particular application, it concluded that it was not particularly relevant given the low rate of offending in Toodyay, as compared to similar rural towns and the State average. The Applicant further submitted that the Commissioner's concerns regarding 'at risk' groups within the community appear to be unfounded, based on the Applicant's conclusions in the PIA that "the locality overall appears to be stable, with a reasonably educated, more mature population and with a low representation of the priority groups."
43. The Applicant also submitted that the Commissioner's evidence regarding alcohol-related harm and offences in Toodyay is lacking because the "police do not provide any data to provide a comparison to other similar localities in WA."
44. Further information was also lodged by the Applicant on the licensed premises in Toodyay that are authorised to sell packaged liquor to the public, in which it cited consumer comments from five witness statements to support the Applicant's observations regarding the limited stock available at The Stables Liquor Store and

made submissions regarding the trading conditions proposed in the notice of intervention.

45. In response to the notice of objection by Ms Robertson, the Applicant submitted that since 2010 when its previous application was refused, the population of Toodyay has increased, patronage of the supermarket has grown, the Victoria Hotel has not proceeded with its approved alteration to construct a bottleshop, the Toodyay Tavern has closed down and its tavern licence has been surrendered and none of the existing packaged liquor outlets have invested or improved their packed liquor offers.

46. In relation to Ms Robertson's submissions regarding the:

- (a) objectivity of the people who provided evidence in favour of the application; and
- (b) opposition in Toodyay to the application,

the Applicant chose to canvass its witnesses as a means of addressing these concerns and also submitted that in "such a small town it is... inevitable that some of the witnesses would have a connection..." with Mr Carter.

47. In relation to Ms Robertson's submissions that the Applicant is motivated by its own private interests rather than the public interest, the Applicant submitted that:

"It is not whether they are motivated by the public interest, it is whether or not the grant of the licence is in the public interest, which are two very different things.

The applicant's substantial objective evidence clearly shows that there is a strong demand for this service, and general dissatisfaction with the packaged liquor services available in town, to the extent that there is substantial economic leakage out of town to Northam and Midland."

48. In relation to the objections by Mr Adair and Mr Taylor regarding alcohol-related harm and ill health in Toodyay, the Applicant referred back to its consideration of potential harm and ill-health in its PIA.

49. In its closing submissions, the Applicant also submitted that it is not simply the size of the store that is important, but also how the relevant space is used.

Ms Robertson's submissions

50. The responsive submissions of Ms Robertson noted the Applicant's assertion that the grant of the licence is justified on the basis of an increase in the population of Toodyay and cited ABS Census Data to establish that the population of the Shire of Toodyay was 4,112 in 2006 and in 2011 was 4,387, an increase of 275 people which equates to 6.7 % or 1.3% per annum, which is too limited a number to justify the grant of another liquor store in Toodyay.

51. Ms Robertson's closing submissions also:
- (a) reiterated that there is a range of venues capable of selling packaged liquor within walking distance of the proposed store, including a dedicated liquor store; and
 - (b) noted that reports from the Department of Health from 2008 and 2011 demonstrate that the rate of alcohol related hospitalisations in Toodyay is increasing.

Determination

52. In determining whether the grant of an application is in 'the public interest', I am required to exercise a discretionary value judgement 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).
53. In undertaking such a determination, the factual matters the licensing authority is bound to take into account are those set out in s 5(2), whereas those it is entitled to take into account are set out in s 38(4). In this regard, s 38(2) clearly places a positive burden on an applicant to demonstrate to the licensing authority that the granting of the application is in the public interest. This means that an applicant cannot simply show that the grant of the licence will not be contrary to the public interest, but must demonstrate a clear public benefit through the grant of the application. As such, the level and degree of evidence to be submitted by an applicant will vary, depending upon the facts and circumstances of each case. Furthermore, the courts have found that applications under the Act cannot proceed on the basis of any legal or factual presumption in favour of approval, or on the expectation that the commercial interests of an applicant will coincide with the public interest.
54. In 2010 the Applicant made a previous application for the grant of a liquor store licence at these premises following the relocation of the supermarket "to cater for the grocery and liquor requirements of Toodyay and all who resorted to the town for their shopping needs." That application was heard contemporaneously with two other competing applications¹ and refused on the basis of the Director's concerns about alcohol-related harm and ill-health in Toodyay.
55. The Applicant's current application seeks the grant of a liquor store licence attached to the Toodyay IGA Supermarket. While the potential of competition between liquor merchants and the benefits of such competition was raised in some of the Applicant's submissions and consumer evidence, the application is also predicated upon the convenience to customers of the IGA supermarket by being able to purchase their

¹ One of these applications related to a proposed alteration/redefinition of the Victoria Hotel to construct a bottleshop and the other related to the removal of The Stable Liquor Store to its current premises.

grocery and liquor products at the same time, which the Applicant refers to as “one-stop shopping.” However, I consider that the Applicant has misconstrued this concept, especially as considered by Buss JA in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, where the concept of one-stop shopping was accepted as being a notorious fact and of great importance in contemporary Australian life, especially to working people who shop at large (i.e. district and/or regional) suburban shopping centres.

56. Whilst convenience is a matter for consideration, the reliance upon the notion of one-stop shopping is severely diminished in the circumstances of this case. In this regard, I also note that in the determination of its 2010 application, a similar finding was made by the Director.
57. Catering to the requirements of consumers pursuant to s 5(1)(c) of the Act must be considered in the context of the proper development of the liquor industry and in her objection Ms Robertson submits that there has been no change of circumstances in Toodyay since the Applicant’s earlier application in 2010 that would justify the grant of the current application.
58. In this regard, I consider that the Applicant appears to have disregarded the Director’s previous refusal of its earlier application, with its PIA simply stating that “The location appears to be a stable, reasonably well educated, more mature population with a low representation of the priority groups”, which is based on its own analysis of the 2011 police data for Toodyay and other specified localities (for comparative purposes).
59. Alternatively, the Commissioner of Police provides evidence of alcohol-related harm in Toodyay and submits that the Applicant failed to mention the existing alcohol-related harm in the Toodyay.
60. In addition to the 35 instances of family domestic violence that involved the use of liquor, the Commissioner also submits that there were 15 non-domestic assaults involving the use of liquor, during the period of January 2013 and May 2014.
61. Additionally, the Commissioner submitted that between 1 January 2013 and 31 December 2013, there were 146 police attendances relating to anti-social behaviour, domestic violence, and other disturbances in the town of Toodyay, with alcohol being a factor in almost 90 per cent of police call outs between the hours of 10 p.m. and 2 a.m., which correlates to the times when people would normally consume liquor.
62. While the Applicant acknowledged a level of alcohol-related harm in every community, it did not consider that such data was relevant, given its view that the rate of offending is markedly lower than similar rural towns and below the State average. However, after considering the information before me, I prefer the evidence of the Commissioner relating to alcohol-related harm in Toodyay and consider that the Applicant’s analysis

of relevant police data does not detract from the Commissioner's evidence and representations.

63. The Applicant also submits that the Commissioner's evidence regarding alcohol-related harm and offences in Toodyay is lacking because the "police do not provide any data to provide a comparison to other similar localities in WA." However, it should be noted that as an intervener the Commissioner carries no burden of proof (see Greaves J, *Re Gull Liquor* (1999) 20 SR (WA) 321), but rather provides submissions in order to assist the licensing authority in making an informed decision. Accordingly, in the absence of any compelling contradictory evidence, I accept the Commissioner's representations.
64. The prevalence of alcohol-related harm and ill-health is also central to the objections of Mr Adair and Mr Taylor, who in their professional observations have noted widespread problems relating to alcohol abuse and its impact on both individuals and families in Toodyay. While I have considered the Applicant's responses to the professional observations and expertise of Mr Adair and Mr Taylor, I note that these responses simply refer back to the Applicant's PIA, which effectively predated the relevant concerns expressed by these objectors.
65. I have also noted Ms Robertson's submission that reports from the Department of Health from 2008 and 2011 demonstrate that the rate of alcohol related hospitalisations in Toodyay is increasing and accept her evidence that the population of the Shire of Toodyay has only increased by 275 people in the five years from 2006 to 2011, which equates to a growth of approximately 1.3% per annum.
66. According to Buss J in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, the correct question the licensing authority should ask itself when determining such an application is, whether (having regard to all of the evidence and any notorious facts, including evidence as to consumer requirements for the range of liquor products and services which the Applicant proposes to provide) it is in the public interest to grant the application, particularly in order to contribute to the proper development of the liquor industry in a manner which reflects the diversity of consumer requirements.
67. Accordingly, the Applicant submitted various witness petitions and witness statements, with the purpose of establishing that the grant of the application would be consistent with object 5(1)(c) (i.e. to cater to the requirements of consumers for liquor and related services). Of these, the witness petitions simply explain that the Applicant is applying for a liquor store licence, "which will be integrated with an IGA supermarket for a one-stop shopping opportunity", with petitioners asked to agree that the proposed licence will be in the public interest, will not cause undue harm or ill-health to anyone in the locality, will not cause disturbance, annoyance or offence to people who live or work in the locality and will not harm the amenity of the locality.

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68. However, I have noted that the Applicant's PIA does not indicate whether the petitioners were provided with all or any relevant information in order for them to come to an informed view as to each of the factors set out in s 38(4) of the Act. Accordingly, on this basis, I consider that little or no weight can be attributed to the witness petitions.
69. In my view, most of the respondents to the Applicant's witness statements, including those who find the existing liquor services within Toodyay to be satisfactory, support the application on the grounds of convenience, although much of this support is also conditional upon specific requirements, such as "if the price is right" and [it] "all depends on pricing on the beer I drink."
70. Other witnesses balanced their support for the application against harm or ill-health issues, expressing concerns:
- (a) that the entrance of the proposed store and the possible promotion of liquor to "kids going to the shops with parents";
 - (b) for "the younger members of the community" and staff of the premises "knowing who's of age and forged ID and drunken clients (coping with)"; and
 - (c) that "Alcoholics may have better access to cheaper liquor."
71. I find these concerns relevant, particularly given that the Applicant's 2010 application was refused on similar grounds.
72. It is often the case when considering the merits of an application that conflict will arise in promoting the objects of the Act, particularly the object of minimising alcohol-related harm versus the object of catering to the requirements of consumers for liquor and related services. In such circumstances, I must weigh and balance those competing interests ((refer *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258) and decide upon the degree of importance to be attributed to each of the relevant factors, as proven by the evidence in each case.
73. Accordingly, in considering whether or not there has been a change in circumstances in Toodyay since the Applicant's earlier application was refused in 2010 that would justify the grant of the application, based on the evidence before me, I conclude that nothing has changed in Toodyay, particularly the issues relating to alcohol-related harm and ill health, since the application was refused in 2010. In arriving at this view, I have noted the approved alteration/redefinition of the Victoria Hotel was not pursued and that the licence issued in respect of the Toodyay Tavern has been surrendered.
74. Ms Robertson submits that these issues may be symptomatic of insufficient consumer requirements for another liquor outlet in Toodyay and I consider that the granting of new packaged liquor outlets in country towns should be approached with a degree of caution, so that the level of services in the community are not diminished to the extent that would be detrimental to the community as a whole.

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75. In relation to consumer convenience, I consider that the grant of the licence would only result in the possible additional benefits of a slight increase in convenience in accessing liquor and possibly some lower prices in the event of increased competition between liquor merchants in Toodyay. However, these marginal benefits must be balanced against the negative aspects of an additional licence in the locality, where an increase in the availability of liquor may lead to increase consumption and therefore to an increase in harm or ill-health due to liquor, including harm caused to persons other than the consumer.
76. In weighing and balancing the competing interests in this case, I accept the submissions of the Commissioner that there are existing levels of alcohol-related harm in Toodyay that may be exacerbated by the establishment of an additional packaged liquor outlet in the town. I also accept the professional observations and conclusions of Mr Adair and Mr Taylor regarding widespread problems relating to the abuse of alcohol and its impact on both individuals and families in Toodyay.
77. In my view, the locality is already well serviced in terms of packaged liquor outlets, with two hotels and a liquor store² located within 155 metres of the proposed premises, which clearly means that there is no basis to the Applicant's claim that there is a monopoly in packaged liquor sales in Toodyay.
78. In considering the public interest, the licensing authority needs to consider both the positive and negative social, economic and health impacts that the grant of the application will have on the community (refer section 19 of the *Interpretation Act 1994* and *Parliamentary Debates*, WA Parliament, Vol 409, p 6342) and when determining such an application, I note there is wide discretion afforded to me in deciding what weight to give to the competing interests and other relevant considerations raised in the application. As such, I do not consider that the requirements of consumers as referenced in s 5(1)(c) of the Act can be given precedence or considered in isolation from the proper development of the liquor industry or the Act's other provisions. Accordingly, I consider that the Applicant has misconstrued the application process by focussing on an inordinate amount of consumer evidence in order to discharge all of its obligations under the Act.
79. I also find that much of the application is based upon assumptions that are not supported by an appropriate level of evidence. For example, there is no evidence to support the Applicant's claim that an expected increase in sales at the IGA supermarket will be beneficial to other businesses in Toodyay or that the grant of the licence will result in any overall benefits to the general community.

² While some parties have also cited the Toodyay Club as a relevant packaged liquor supplier, I note that club licences are not authorised to sell liquor to members of the general public and therefore consider that the Toodyay Club is not a relevant supplier of packaged liquor for the purposes of these proceedings.

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80. In this regard, I consider that the application is generally based on assertions, rather than evidence and that the information submitted, particularly the questionnaires and letters of support, offer little probative value. Conversely, I consider that the Applicant's own evidence indicates that focus of the application is on providing a service to customers of the Toodyay IGA Supermarket and on increasing the Applicant's supermarket business, particularly the reference to the IBA study, which indicated that a liquor outlet will increase supermarket turnover.
81. Furthermore, given the paucity of compelling evidence to demonstrate the relevant public interest considerations, I consider that no persuasive evidence has been lodged to establish that levels of alcohol-related harm have changed in Toodyay since 2010, when the Applicant's previous application was refused.
82. Therefore, I am not satisfied by the Applicant's evidence that it is in the public interest to grant the application when all the facts and circumstances of the case are considered, bearing in mind that the onus is upon the Applicant to satisfy the licensing authority that the grant of the application is in the public interest. Accordingly, the application is refused.
83. 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.
84. This matter has been determined by me under delegation pursuant to s 15 of the Act.



Brett Snell

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING