

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

Applicant: Bluffpoint Pty Ltd
(represented by Ms Jesscia Patterson of Jessica Patterson Law & Consultancy Pty Ltd)

Respondent: Milem Pty Ltd
(represented by Mr Mario Sequeira of Hospitality Total Services (Aus) Pty Ltd)

Intervenor: Director of Liquor Licensing
(represented by Mr Thomas Boyle of the State Solicitor's Office)

Objectors: Ms Isolda Williams
(self-represented)

Samatim Pty Ltd
(represented by Mr Stephen Zito)

Commission: Ms Pamela Hass (Presiding Member)
Ms Shelley Davies (Member)
Mr Tony Di Francesco (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* (the "Act") for review of the decision of the Director of Liquor Licensing to conditionally grant a liquor store licence.

Premises: The Good Grocer Cellar East Fremantle
6 Silas Street, East Fremantle, WA, 6158

Date of lodgement of Application: 4 October 2024

Date of Hearing: On the papers

Date of Determination: 31 March 2026

Determination: The Decision of the Director of Liquor Licensing is affirmed and the Application for Review is dismissed.

Authorities referred to in determination:

- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2024] WASC 128
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASC 227
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70
- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017).
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2020] WASCA 157
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 205

BACKGROUND

1. This matter concerns an application (the **Application**) lodged on 1 December 2023 by Milem Pty Ltd (the **Respondent**) for the conditional grant of a liquor store licence pursuant to sections 47, 62 and 68 of the *Liquor Control Act 1998* (the **Act**) for premises to be known as The Good Grocer Cellar East Fremantle (the **Premises**) located on Silas Street, East Fremantle, Western Australia.
2. The Application was supported by a Public Interest Assessment (**PIA**), supporting documents, eight letters of support, and a survey of 358 local residents.
3. The Respondent's submissions outline that the proposal forms part of a broader redevelopment consisting of a new Good Grocer IGA and an adjoining 80m² liquor store with a distinct entrance. It is intended to offer an independent, diverse, and speciality-focused product range, including WA produced goods, small batch and dietary specific products, as well as tasting experiences and curated selections not presently available in the locality.
4. The Respondent emphasises convenience, accessibility, and improved consumer choice, particularly noting road access limitations affecting current outlets. The consumer survey results indicate strong support, commercial interest from suppliers, and broad community demand for convenience, speciality products and one stop shopping.
5. The Respondent addressed harm minimisation by proposing strict product controls, CCTV, Responsible Service of Alcohol (**RSA**) training and a non-transparent barrier between the grocery and liquor areas. Demographic and crime data suggest the locality is socio-economically stable with relatively low-risk indicators. The Respondent submits that the amenity will be enhanced due to site redevelopment, expanded parking and compatibility with the commercial setting.
6. As required under sections 38(1)(a) and 38(2) of the Act, the Application was subject to the public interest test, which invokes the considerations set out in section 38(4) of the Act. The Application was fully advertised for 14 days. Three notices of objection were lodged: one by a resident and two local businesses, and one additional submission opposing the application was received.
7. Objectors argue that the Application is not in the public interest, that it will have adverse amenity impacts and that existing outlets already meet consumer needs. They challenge the Respondent's characterisation of its product ranges and assert that the proposal will merely duplicate existing services and products. Further submissions highlight concerns about inaccuracies in the PIA and a failure to adequately satisfy the section 36B(4) test.
8. In reply, the Respondent disputes these claims, asserting that speciality offerings, flexibility in product selection, curated ranges, and planned features such as tasting areas, meaningfully differentiate the proposed store at the Premises. The Respondent also emphasises limitations of current outlets relating to product breadth, accessibility, and proximity to consumers east of Stirling Highway. The Respondent maintains that only a minority of survey respondents currently use the objectors' stores and that the locality's packaged liquor requirements are not being fully met.

9. Assessment of the material indicates that while the Respondent has not provided a fully developed demand/supply analysis as required by section 36B(4), evidence demonstrates consumer desire for increased convenience, accessibility, speciality products, and WA focussed offerings. Accessibility barriers and road network constraints reduce the practicality of using existing outlets for many local consumers. Proposed conditions - including restrictions on advertising, minimum proportions of speciality and WA products, and restrictions on container sizes - mitigate concerns about amenity and impulse purchasing.
10. The objections raised by two of the three objectors were not fully substantiated: one objection had partial merit but was outweighed by the Respondent's evidence and relevant Supreme Court authority.
11. Neither WA Police nor the Mental Health Commission opposed the Application and no material concerns were identified regarding socio-economic risk factors. The evidence overall supported that granting the Application would promote consumer convenience, diversity, and competition, consistent with the objects in section 5 of the Act, and that, on balance, the Application is in the public interest.
12. Accordingly, it was recommended by the Director on 13 September 2024 ("**Director's Decision**") that the Application be granted subject to appropriate conditions designed to address harm minimisation, visibility restrictions, product range requirements and responsible trading practices.

THE REVIEW

13. On 4 October 2024, the Applicant applied for a review of the Director's Decision, pursuant to section 25 of the Act. The Applicant was dissatisfied with the Director's Decision and submitted that the grant of the licence was not in the public interest and was otherwise contrary to the Act.

Submissions from the Applicant

14. The Applicant (being Bluffpoint Pty Ltd) is the licensee of Liquor Barons George St East Fremantle, situated approximately 550 metres from the proposed store, lodged an objection on the grounds that the Application was not in the public interest and was contrary to the Act.
15. The Applicant submits that the Commission should find that the licence Application has not satisfied the statutory requirements under the Act. The Applicant submits that the evidence advanced by the Respondent does not demonstrate that local packaged liquor requirements cannot reasonably be met by existing outlets in the defined locality, nor does it establish that the proposed licence would contribute to the proper development of relevant industries or the proper regulation of liquor in Western Australia.
16. The Respondent bears the onus of satisfying both the consumer requirements test in section 36B(4) of the Act and the public interest test in section 38 of the Act.
17. The Applicant submits that the Respondent has failed to meet the "meaningful additional hurdle" required under section 36B(4), as interpreted by the Supreme Court, because it has not identified with clarity the nature, scope, or parameters of the consumer requirements it claims are unmet. This deficiency prevents the demand/supply analysis required by the Act.

Further, the Applicant's reliance on supplier letters is misplaced, as these letters do not address unmet consumer demand, do not show difficulty accessing the market through existing stores, and in many cases relate to products already stocked by the Applicant in the Applicant's store or other existing outlets. Several letters also lack authenticity or verification.

18. The Applicant submits that the evidence demonstrates considerable overlap between the Respondent's proposed product range and the existing offerings of Liquor Barons George St East Fremantle, Cellarbrations at East Fremantle, and other local premises. Existing outlets already provide speciality, craft, small batch, WA made and dietary specific products.
19. The Applicant submits that the Respondent has not demonstrated that its proposal offers anything notably different or meaningfully additional and that the Respondent's reliance on grocery shopping convenience should attract little weight, given the minimal nature of the adjoining supermarket offering.
20. The Applicant further submits that the relevant locality - properly defined as the area within approximately 2km to the east, south and southwest, bounded by the Swan River - is already adequately serviced, with at least six packaged liquor premises meeting the diverse requirements of consumers. Convenience, accessibility, competition and product range are already satisfactorily provided within that locality. An additional licence would not advance the proper development of the liquor industry and risks unnecessary duplication.
21. In conclusion, the Applicant submits that the evidence does not support a finding that existing premises cannot reasonably meet consumer requirements, nor does it support a finding that granting the licence would be in the public interest. Accordingly, the Commission is respectfully urged to uphold this Application for Review, quash the Director's Decision, refuse the licence Application and make no further orders.

Submissions from the Respondent

22. The Respondent relies on the submissions of the Director, who confirms that the conditional grant of the liquor store licence properly satisfies the statutory tests under ss 36B(4) and 38 of the Act and is consistent with the legislative framework and applicable case law. The Director identified no legal impediment to the grant and notes that the Application is supported by cogent evidence demonstrating compliance with both the consumer requirements test and the public interest test.
23. The licence conditions imposed by the Director reflect a comprehensive evaluation of public interest considerations undertaken in consultation with relevant stakeholders, including the WA Police Licensing Enforcement Unit and the then Department of Local Government, Sport and Cultural Industries. Those conditions are designed to address unmet consumer requirements within the defined locality, minimise potential alcohol related harm, and enhance accessibility, diversity, and modern retail convenience for consumers.
24. The Commission is reminded that, in accordance with section 25(2c) of the Act, its review must be confined to material before the Director at the time of the decision.
25. The Respondent submits that the objections advanced by the three objectors are based largely on assumptions and unsupported assertions.

26. The Applicant contends that the locality is already well served, that consumer demand is met and that the grant would lead to oversupply.
27. Samatim asserts that the Respondent misrepresented its product range and stock levels, though the evidence supporting Samatim was compiled only after the document exchange process, contrary to the established principle that stock assessments must reflect conditions at the time of Application.
28. Objector Williams' concerns largely repeat those of Samatim and raise no distinct issues.
29. The Respondent submits that under section 36B(4) and the four-step analysis set out in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2024] WASC 128 (**Liquorland Southern River decision**), the Commission must determine the relevant locality, identify consumer requirements, consider existing packaged liquor services, and assess whether those needs cannot reasonably be met by existing outlets. The locality determined by the Director - bounded by Marmion Street, Carrington Street, the Swan River and East Street - accords with the *Liquorland Southern River* decision, particularly in recognising the significance of physical barriers such as Stirling Highway and Canning Highway, which impede access to the Applicant's store and to Samatim's store from significant portions of the locality.
30. Consumer requirements within the locality extend beyond the mere availability of liquor to include considerations such as convenience, diversity, speciality products, WA produced goods, low and non-alcohol options, dietary specific products, and one stop shopping. These qualitative requirements are supported by substantial evidence, including the Respondent's consumer survey of 359 respondents, which revealed that 44.26% of consumers shop outside the locality due to unmet needs, and that existing outlets have limited appeal, with only 14.85% and 6.16% of respondents respectively using Liquor Barons George St East Fremantle and Cellarbrations East Fremantle.
31. The existing packaged liquor outlets in the locality do not satisfy modern consumer expectations for convenience, speciality offerings or integrated grocery liquor shopping. Neither the Applicant nor Samatim provide substantial representation of WA craft products, organic or low-alcohol ranges, or dietary specific liquor items. Further, their locations are significantly constrained by major arterial roads, impairing consumer access. By contrast, the Respondent proposes an independent, speciality-focussed store operating alongside a full-service 1,500 sqm IGA Good Grocer, offering a unique one stop shopping experience recognised in decisions such as the *IGA Plus Liquor Corrigin* (LC 24/2015) decision and *Woolworths Ltd v Director of Liquor Licensing* [2013] WASC 227 as a contemporary consumer preference of legitimate relevance.
32. The objections advanced by the Applicant and Samatim largely reflect commercial self-interest and do not meet the evidentiary burden in section 73(10) of the Act. The broader public interest, including the proper development of the liquor industry, consumer accessibility, competition, diversity, and amenity, strongly favours granting the licence. Harm minimisation measures embedded in the licence conditions further reinforce that the proposal aligns with the primary and secondary objects of the Act.
33. For these reasons, the Respondent submits that the objection grounds fail, that the statutory tests under ss 36B(4) and 38 are clearly satisfied, and that the Commission should affirm the Director's Decision and dismiss this Application for Review.

Submissions from the Intervenor

34. The Director intervenes for the limited purpose of outlining the applicable legal framework and identifying evidence relevant to the Commission's determination.
35. The Commission must decide two central issues afresh: whether the consumer requirements condition in section 36B(4) is met - namely, that local packaged liquor requirements cannot reasonably be met by existing premises in the locality; and whether the grant of the licence is in the public interest.
36. Section 36B(4) requires a structured four-stage analysis: identifying the relevant locality; determining consumer requirements for packaged liquor within that locality; identifying the services already provided by existing outlets; and assessing whether those requirements cannot reasonably be met by existing premises.
37. The locality proposed in the Respondent's material - bounded by Riverside Road, Carrington Street, Marmion Street and East Street - accords with the principles articulated in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (**Liquorland Karrinyup decision**) and *Liquorland Southern River*. The Respondent's evidence suggests consumer requirements including accessibility, speciality and locally produced products, competitive pricing, and integrated ("one stop shop") shopping convenience. Its survey of 329 respondents showed strong support for the proposal and identified accessibility, speciality products, and convenience as key purchasing drivers.
38. The existing outlets in the locality include Cellarbrations East Fremantle, Liquor Barons George St East Fremantle (operated by the Applicant), and BWS Palmyra. The operator of Cellarbrations East Fremantle and the Applicant dispute the Respondent's claims regarding limited ranges, accessibility challenges, and insufficient speciality offerings, and maintain that their stores provide extensive and diverse product lines. The evidence also shows that approximately 45% of the Respondent's proposed speciality products are already available at existing local licence holders.
39. In assessing whether consumer requirements cannot reasonably be met, the Respondent relies on survey data showing that 44% of respondents do not shop at existing stores and on its plans to provide bespoke service, tastings, and curated ranges. However, objection material indicates that the Applicant already provides speciality service offerings and that a considerable portion of the Respondent's proposed products are already available locally. Evidence from residents opposed to the proposal also suggests that many believe current supply is adequate.
40. If the consumer requirements condition is met, the Commission must then consider whether granting the licence is in the public interest under sections 5 and 38 of the Act. This requires a weighing of the objects of the Act, including the minimisation of alcohol related harm, proper industry development, and diversity of consumer requirements.
41. Available evidence indicates existing harm levels in the locality are not unacceptable. The Respondent proposes comprehensive harm minimisation measures, which may mitigate some risks associated with increased liquor availability. The Commission must also balance potential economic and competition benefits against the need to avoid oversupply or proliferation of liquor outlets.

42. In conclusion, the Director submits that, based on the evidence before the Commission, it is open to the Commission to find that the consumer requirements condition and the public interest condition have been met, and therefore to affirm the Director's Decision.

Submissions from the Objectors

43. Ms Isolda Williams strongly objected to the Director's Decision on the following grounds:

- a) That the Respondent's claims regarding accessibility to the Cellarbrations East Fremantle store are incorrect and that those premises are located at the T-junction of a main road and are readily accessible from Stirling Highway, Canning Highway, St Peters Road and Sewell Street. Access by car, bicycle or foot is not problematic, and ample parking is available.
- b) Ms Williams disputes the characterisation of the Cellarbrations East Fremantle store product range as merely "average", noting that its pricing and product selection are deliberately curated to meet customer preferences, with a broad offering of local craft beer as well as national and international wines across multiple vintages.
- c) That the Respondent has misrepresented the scale of its store's refrigeration facilities. Contrary to the Respondent's claim that the premises contain seven fridges, the premises store has more than fifteen refrigeration units.
- d) The Respondent has failed to address the issue of potential oversupply of liquor in the locality.
- e) The introduction of another liquor outlet will disadvantage small local businesses. Mr Williams emphasised that long-standing small traders - who have invested substantial effort in building their businesses - may face significant commercial harm or displacement if larger franchise-affiliated operators are permitted to enter the locality.

44. Mr Stephen Zito, sole director of Samatim Pty Ltd, the licensee of Cellarbrations East Fremantle, provided the following submissions:

- a) The Respondent's description of Samatim's business operations is inaccurate and misleading. Samatim has operated for more than 15 years, servicing a well established customer base with a defined and diverse product range, and has provided photographic evidence to the Director refuting several of the Respondent's assertions. The Respondent, by contrast, has offered no evidentiary basis for its claims, appearing to rely on the assumption that such assertions would go unchallenged.
- b) The Respondent has misrepresented the variety and quality of products offered at the Cellarbrations East Fremantle store. Contrary to the Respondent's suggestion that the business at Cellarbrations East Fremantle provides only a "standard range," Samatim maintains that the store offers a carefully curated selection, including a wide variety of local and international craft beers and a broad wine range extending across multiple vintages and styles.
- c) Concerns are also raised regarding the Respondent's statements about store layout and facilities. Samatim submits that these claims are plainly incorrect, noting that the

premises contain twenty fridge-door spaces, not seven as claimed, and that dedicated tasting areas exist but are used flexibly to meet customer preferences. Samatim also rejects the Respondent's suggestion that speciality and dietary specific products are not stocked, confirming that the store carries small batch, organic, vegan, and gluten free lines, albeit without prominently marketing them in the manner asserted by the Respondent.

- d) The public interest is already being met by existing packaged liquor outlets in the locality and nearby surrounding areas, which collectively provide a broad and sufficient range of liquor products and services. On this basis, the granting of an additional licence would contribute to market oversaturation.
- e) Samatim also challenges the Respondent's claim that pedestrian and cyclist access is difficult, pointing out that the store is located on a busy arterial road with a controlled intersection that facilitates access for the very users described by the Respondent.
- f) Samatim questions the adequacy and reliability of the Respondent's due diligence process, submitting that the Respondent has repeatedly failed to accurately represent key attributes of Samatim's operations, including product diversity and accessibility.
- g) Finally, Samatim expresses concern that the Director's Decision did not address the specific objections raised, including misrepresentations of product range, accessibility issues, and market saturation. These issues require proper consideration before any final decision on the licence Application is made.

LEGAL AND STATUTORY FRAMEWORK

- 45. The Commission is not constrained by a finding of error on the part of the Director but is to undertake a full review and make a determination on the basis of the same materials that were before the Director (*Hancock v Executive Director of Public Health* [2008] WASC 224, [54]; section 25(2c) of the Act).
- 46. On review pursuant to section 25 of the Act, the Commission may:
 - a) affirm, vary or quash the decision of the Director;
 - b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;
 - c) give directions:
 - i. as to any questions of law reviewed; or
 - ii. to the Director, to which effect shall be given; and
 - d) make any incidental order.
- 47. When conducting a review, the Commission:
 - a) may make its determination on the balance of probabilities: section 16(1)(b)(ii);

- b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply: section 16(7)(a);
 - c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms: section 16(7)(b); and
 - d) is to act speedily and with as little formality and technicality as is practicable: section 16(7)(c).
48. The failure to refer to any specific evidence in written reasons does not mean that the evidence has not been considered (*Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017)).
49. Pursuant to section 73(10) of the Act, an objector bears the burden of establishing the validity of the objection. Pursuant to section 74(1) of the Act, such objection can only be made on the grounds that:
- a) the grant of the application would not be in the public interest; or
 - b) the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or
 - c) that if the application were granted:
 - i. undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or
 - ii. the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened; or
 - d) that the grant of the application would otherwise be contrary to the Act.
50. The Commission is obliged to determine the Application by reference to the issues which arise from the Application in the context of the relevant provisions of the Act, the evidence (including notorious facts) before the Commission and any submissions made by the Applicant and the interveners (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, [55] (Buss JA) (**Woolworths Decision**)).
51. The term "public interest" is not defined in the Act. Nor does the Act expressly state the nature of the factors to be considered by the Commission in determining whether an application is in the public interest.
52. The term "public interest" is defined in the Macquarie Dictionary as "the benefit or advantage to a whole community", as opposed to the individual. It directs attention to that conclusion or determination which best serves the advancement of the interests or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.¹

¹ *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70 per Tamberlin J [9].

53. In the Woolworths Decision at [48]-[49], Buss JA (as his Honour then was) observed that where a statute provides no positive indication of the considerations by reference to which a decision is to be made, a general reference to "the public interest" will ordinarily only be confined by the scope and purposes of the statute, and in the context of the Act, the decision maker will be bound to take into account factual matters relevant to the objects of the Act set out in section 5(2).
54. The primary objects of the Act include the minimisation of harm or ill-health caused to people, or any group of people, due to the use of liquor. The secondary objects of the Act include the provision of "adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor" (sections 5(1)(b) and 5(2)(d) of the Act).
55. However, as predicated by the conjunctive "and" in Section 5(1) between each of the listed three objects and the mandate in section 5(2) for the licensing authority to "have regard to the primary objects of this Act", the Commission must have regard firstly, to each of the primary objects of the Act, and then the secondary objects with the primary objects to take precedence in the case of inconsistency with the secondary objects (section 5(3)). Each primary and secondary object informing the subject matter, scope and purpose of the Act.²
56. Relevant to the Application for a grant of a liquor store licence is section 36B of the Act, which is titled 'Restrictions on grant or removal of certain licences authorising sale of packaged liquor' and which says:

"(1) In this section —

***local packaged liquor requirements**, in relation to an application to which this section applies, means the requirements of consumers for packaged liquor in the locality in which the proposed licensed premises are, or are to be, situated;*

***packaged liquor premises** means premises to which a licence referred to in subsection (2) relates;*

***prescribed area** means the area prescribed for the purposes of this section;*

***prescribed distance** means the distance prescribed for the purposes of this section;*

***proposed licensed premises**, in relation to an application to which this section applies, means —*

(a) if the application is for the grant of a licence — the premises to which the application relates; or

(b) if the application is for the removal of a licence — the premises to which the licence is sought to be removed;

² *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2020] WASCA 157 [32]

retail section —

- (a) *in relation to packaged liquor premises — means the part or parts of the premises on which packaged liquor is displayed for the purposes of sale or sold; and*
 - (b) *in relation to proposed licensed premises — means the part or parts of the premises on which packaged liquor is to be displayed for the purposes of sale or sold.*
- (2) *This section applies to an application for the grant or removal of any of the following licences —*
- (a) *a hotel licence without restriction;*
 - (b) *a tavern licence;*
 - (c) *a liquor store licence;*
 - (d) *a special facility licence of a prescribed type.*
- (3) *The licensing authority must not hear or determine an application to which this section applies if —*
- (a) *packaged liquor premises are situated less than the prescribed distance from the proposed licensed premises; and*
 - (b) *the area of the retail section of those packaged liquor premises exceeds the prescribed area; and*
 - (c) *the area of the retail section of the proposed licensed premises exceeds the prescribed area.*
- (4) *The licensing authority must not grant an application to which this section applies unless satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated.*
- (5) *Regulations made for the purposes of the definition of prescribed distance in subsection (1) may prescribe different distances in relation to packaged liquor premises in different areas of the State.”*

57. Section 36B(3) is not relevant in this matter. However, the restriction in section 36B(4) is relevant. That section prohibits the licensing authority from granting the licence “*unless it is satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated*”.

58. Furthermore, it is incumbent on the Respondent, pursuant to section 38, to show that it is in the public interest for the licensing authority to grant the licence. Section 38 is titled ‘Some applications not to be granted unless in the public interest’ and says:

“(1) Subsection (2) applies to —

(a) an application for the grant or removal of a licence of a kind prescribed; or

(b) an application for a permit of a kind prescribed; or

(c) any other application to which the Director decides it is appropriate for subsection (2) to apply.

(2) An Applicant who makes an application to which this subsection applies must satisfy the licensing authority that granting the application is in the public interest.”

59. Accordingly, to grant the liquor store licence to the Respondent, the licensing authority must find that the Respondent on the balance of probabilities, has proved two requirements:

a) that *“local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated”*; and

b) that the grant of the Application would be in the public interest.

60. Sections 36B and 38 are not mutually exclusive. Accordingly, it follows that if section 36B is not satisfied, then the Application fails and it is unnecessary to consider section 38 of the Act.

61. It is clear from the *Liquorland Karrinyup* decision that *“liquor requirements”* can and should be construed broadly such that it could include liquor of a *“particular type”*.

62. Section 36B(4) requires an assessment of the Applicant’s evidence to determine:

a) what the packaged liquor requirements in the locality are; and

b) whether those requirements can reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated.

63. According to Archer J in the *Liquorland Karrinyup* decision, the words *“requirements of consumers”* mean the same in section 36B(1) and section 5(1)(c) and, subject to the facts and issues of a particular case, may involve consideration of the same types of matters.

64. If, after establishing certain local packaged liquor requirements exists, it transpires those liquor requirements can be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, then the Application must fail.

65. It has been held that the word *“cannot reasonably be met”* in section 36B(4) means *“cannot sensibly or rationally be met”*.

DETERMINATION

66. The Commission has considered:

a) all of the materials before the Director when making the Director’s Decision; and

b) all written submissions filed by the Applicant, the Respondent, the Intervenor and the Objectors in this Application for review.

67. The Intervenor has submitted that the Commission must decide two central issues afresh: whether the consumer requirements condition in section 36B(4) is met - namely, that local packaged liquor requirements cannot reasonably be met by existing premises in the locality; and whether the grant of the licence is in the public interest
68. The Commission accepts that submission.
69. The Commission must be satisfied that the grant of an application is in the public interest pursuant to section 38 ("**Public Interest Condition**"), and that the "*local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated*" pursuant to section 36B(4) ("**Consumer Requirements condition**").
70. The Commission addresses those 2 conditions as follows.

Consumer Requirements Condition

71. Section 36B(4) of the Act requires a structured four-stage analysis: identifying the relevant locality; determining consumer requirements for packaged liquor within that locality; identifying the services already provided by existing outlets; and assessing whether those requirements cannot reasonably be met by existing premises.

Definition of Locality

72. The first step in making a determination as to section 36B(4) of the Act is to determine what is to be held as the 'locality' in this case.
73. The Commission holds that the locality is the area geographically close to a premises, being determined based on the circumstances of each individual case, looking to consider the topographical features and the areas of the site which would be accessed by people utilising various modes of transport
74. The locality proposed in the Respondent's material - bounded by Riverside Road, Carrington Street, Marmion Street and East Street - accords with the principles articulated in *Liquorland Karrinyup* and *Liquorland Southern River*.
75. The Commission finds that the locality is that area bounded by Riverside Road, Carrington Street, Marmion Street and East Street ("**Locality**").

What are the local Packaged Liquor Requirements?

76. The Commission is required to determine, within the Locality determined, the packaged liquor requirements.
77. The Respondent submitted that there is a consumer need for competition, convenience and one stop shopping. The Respondent further submitted that curated offerings, keeping in mind factors like accessibility, product diversity, customer service excellence, convenience and strategic location for one stop shopping, ensure that the Respondent will cater to the reasonable requirements of consumers.
78. The Applicant challenged these findings, submitting that there has been insufficient evidence presented.

79. The Commission finds that, within the Locality, there is a consumer requirement for:
- a) one stop shopping/convenience; and
 - b) curated offerings.

Are the Local Packaged Liquor Requirements met by existing stores?

80. The Commission is then required to determine whether the local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the Locality.
81. The Respondent's evidence suggests consumer requirements including accessibility, speciality and locally produced products, competitive pricing, and integrated shopping convenience (one stop shopping) cannot be met.
82. The survey evidence tendered by the Respondent of 329 respondents, showed strong support for the proposal and identified accessibility, speciality products, and convenience as key purchasing drivers.
83. That evidence is accepted by the Commission.
84. The Commission holds that the local packaged liquor requirements in the Locality are not reasonably met by the existing three stores, being Cellarbrations East Fremantle, Liquor Barons George St East Fremantle and BWS Palmyra.
85. Therefore, the Respondent has satisfied the Consumer Requirement Condition as set out in section 36B(4) of the Act.

Public Interest Condition

86. If the Consumer Requirements Condition is met, the Commission must then consider whether granting the licence is in the public interest under sections 5 and 38 of the Act. This requires a weighing of the objects of the Act, including the minimisation of alcohol related harm, proper industry development, and diversity of consumer requirements.
87. Available evidence indicates existing harm levels in the Locality are not unacceptable.
88. The Respondent proposes comprehensive harm minimisation measures, which may mitigate some risks associated with increased liquor availability.
89. The Commission must also balance potential economic and competition benefits against the need to avoid oversupply or proliferation of liquor outlets.
90. The issue to be determined by the Commission is whether the Respondent has satisfied the Commission that the granting of the Application is in the public interest.
91. The basis of those considerations by the Commission is set out below.

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

92. In determining the public interest for the purposes of the Act, the Commission has had regard to factual matters relevant to the objects of the Act set out in sections 5(1)-(2) and 38(4).
93. Notably, such factual matters include the possible harm or ill-health that may be caused by the proposed Premises and the positive or negative effects which the grant of the Application would have upon amenity: *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 per Buss J at [49], [50], *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2020] WASCA 157 at [52], [173], [175], [184], [207], [231].
94. Further, the determination of public interest is not isolated from considerations of competition, convenience, product range and efficiency. This was confirmed by Archer J in the *Liquorland Karrinyup* decision when her Honour held (at [106]) that such matters are relevant to both the Public Interest and Consumer Requirements Conditions.
95. In assessing this aspect of the Application, the Commission must adopt the approach outlined in *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 205 (**Carnegies Decision**) requiring the Commission to:
 - a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to uses of liquor;
 - b) make findings about the likely degree of harm to result from the grant of the Application;
 - c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
 - d) weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the Respondent has satisfied the Commission that it was in the public interest to grant the licence.

Findings as to the existing levels of harm

96. The evidence submitted by the Respondent to provide an assessment of the alcohol related harm in the locality is based on Socio-Economic Indexes for Areas (SEIFA) being a product developed by the Australian Bureau of Statistics and on and from statements made by those responding to the questionnaires completed by objectors and other residents living near the Premises - 359 in total.
97. The statistics submitted indicate that the Locality of East Fremantle makes East Fremantle an attractive place to live and do business and it has a strong economy and its residents are generally well educated indicating a low risk to alcohol related harm.
98. The Commission accepts the Respondent's submission.
99. The Commission finds that there is an existing level of harm and ill-health in the Locality due to the use of liquor is low with very few at risk groups.
100. This is supported by the evidence.

The likely degree of harm to result from the grant

101. The Objectors refer to the high availability of alcohol already within the Locality.
102. The issue in the Application is whether the increased availability of alcohol arising for the grant of the Application will result in an unacceptable increase in harm and ill-health to those in the Locality.
103. It should be noted that there are already three packaged outlets in the Locality.
104. It is always difficult to predict what may occur if a particular application is granted. It involves a prediction as to the likelihood that something may occur.
105. In respect to the harm occurring on or immediately around the Premises, the Commission finds that there is unlikely to be an increase in harm and ill-health if the Application is granted due to the increased accessibility of liquor in the area because of the relative small size of the Premises, the curated nature of the offerings at the Premises and the implementation of the conditions that have been imposed on the Applicant in the Directors Decision.
106. The Commission is not satisfied that opportunistic access by way of the additional liquor outlet, the subject of the Application, would add any further significant degree of harm and ill-health in the Locality.
107. The Commission is satisfied that on the balance of probabilities the likely degree of harm that would result from the granting of the licence under the Application is low.

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

108. Whilst the Commission acknowledges there may be an existing level of harm associated with use of alcohol in the Locality, given that the Commission has determined that there is a low risk of an increase in harm that would result from the granting of the Application, it cannot be concluded that such risk would result in unacceptable levels of harm as a result of the granting of the Application.

Weighing of the Factors

109. To complete the Carnegies analysis, the Commission must weigh the likely degree of harm as assessed, together with any relevant factors, to determine whether the grant of the Application is in the public interest.
110. Whilst it is acknowledged that harm and ill-health may exist within the relevant area, and that there is a possible degree of harm that may occur due to the granting of the Application, the Commission considers that, having regard to the Respondent's experience and the Respondent's acceptance of conditions to the licence, that although a degree of harm and ill-health may exist, and the grant of this Application could likely lead to some increase of harm, it would not be to a level as to make it inappropriate to grant the Application.
111. In weighing the likelihood of alcohol related harm and ill-health against the benefits to the Locality of the grant of the Application, the Commission finds that such likelihood is not so unacceptable that it outweighs the benefits of granting the Application.

Impact of Amenity of the Area

112. The Commission is satisfied on the basis of the evidence provided that the amenity, quiet or good order of the Locality will not be adversely affected by the grant of the Application.

Objections

113. Three objections were provided - one of them resulting in being the Applicant in this Application for Review.

114. The Applicant as an Objector and then as the Applicant in this Application for Review has had the objections aired as submissions. Those submissions are dealt within and considered in the context of the Commission's review.

115. Ms Isolda Williams (the First Objector):

- a) objected on the grounds that the Respondent's claims regarding accessibility to the Cellarbrations East Fremantle store were incorrect and asserted that that premises was readily accessible by car, bicycle or foot and that there was ample parking available;
- b) disputed the characterisation of the Cellarbrations East Fremantle store product range as merely average and that it had a broad offering of local craft beer as well as national and international wines across multiple vintages;
- c) asserted that the Respondent had misrepresented the scale of the Premises refrigeration facilities;
- d) asserted that the Respondent had failed to address the issue of potential oversupply of liquor in the Locality; and
- e) asserted that the introduction of another liquor outlet will disadvantage small local businesses.

116. Samatim Pty Ltd (the Second Objector) provided submissions through Mr Stephen Zito, sole director of Samatim Pty Ltd, which is the licensee of Celebrations East Fremantle:

- a) asserted that the description by the Respondent of Samatim's business operations was inaccurate and misleading;
- b) asserted that the Respondent has misrepresented the variety and quality of products offered at the Cellarbrations East Fremantle store;
- c) raised concerns about the Respondent's statements about the Premises layout and facilities;
- d) submitted that the public interest is already being met by existing package liquor outlets in the Locality and the surrounding areas and that granting the Application would contribute to market oversaturation;
- e) challenged the Respondent's claim that pedestrian and cyclist access to the Cellarbrations East Fremantle store is difficult;

- f) questioned the adequacy and reliability of the Respondent's due diligence process; and
- g) expressed concern that the Director's conditional grant letter did not address the specific objections raised.

117. The Commission thanks the Objectors for their submissions.

118. As set out in previous paragraphs, the Commission has undertaken an extensive assessment of the merits of the Application by reference to all the evidence. The submissions of the Objectors have been considered.

119. The Objectors assertions however, whilst valid, have not been substantiated by probative evidence to establish their validity.

120. On balance, the Commission finds that none of the grounds of objection have been made out by the Objectors and as such, the burden of establishing the validity of the objections has not been discharged in accordance with the requirements of section 73(1) of the Act.

Conclusion on public interest

121. The Commission has found that the Respondent has discharged its onus and that the grant of the Application is in the public interest.

CONCLUSIONS

122. The Commission finds that the Public Interest Condition (section 38 of the Act) and the Consumer Requirements Condition (section 36B(4) of the Act) have been met.

123. Accordingly, the application for the conditional grant of a Liquor Store Licence is granted, subject to the conditions set out on the Director's Decision.

ORDERS

124. The Decision of the Director of Liquor Licensing is affirmed.

125. The Application for Review is dismissed.



PAMELA HASS
PRESIDING MEMBER



SHELLEY DAVIES
MEMBER



TONY DI FRANCESCO
MEMBER