

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Liquorland (Australia) Pty Ltd
(represented by Mr Stephen Standing as counsel and Ms Brigette McFarlane of Herbert Smith Freehills Kramer)

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

Commission: Mr Tony Di Francesco (Presiding Member)
Mr Jared Brotherston (Member)
Ms Mary Brown (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of a decision by the delegate of the Director of Liquor Licensing to refuse an application for the conditional grant of a liquor store licence

Premises: Liquorland Southern River East
Southern River Square Shopping Centre
Lot 11, Southern River Road, Southern River

Date of Hearing: 19 November 2024

Date of Determination: 28 April 2026

Determination: The Director's Decision is quashed and the Application for a Liquor Store Licence is granted.

Authorities referred to in determination:

- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* (LC 09/2023)
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2024] WASC 128
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356
- *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70
- *O'Sullivan v Farrer* [1989] HCA 61
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017).

BACKGROUND

1. This matter concerns an application (“**Application**”) by Liquorland (Australia) Pty Ltd (“**Applicant**”) for the conditional grant of a liquor store licence pursuant to sections 41 and 62 of the *Liquor Control Act 1988* (“**the Act**”) for premises known as Liquorland Southern River East (“**Proposed Premises**”) located at the Southern River Square Shopping Centre, Southern River.
2. On 25 February 2021, the Applicant lodged the Application for the conditional grant of a liquor store licence for the Proposed Premises.
3. The Proposed Premises is said to be a ‘convenience liquor store’ located adjacent to the Coles supermarket at the new Southern River Square Shopping Centre in Southern River (“**Centre**”). It is described as being designed to service a particularly fast-growing community residing in new residential real estates in the immediate vicinity of the Centre. The proposed Store comprises a total licensed area of 197m², comprised of a selling area of 151m², a cool room area of 33m² and a stock area of 13m².
4. The Application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing (“**Director**”). No notices of intervention or objection were lodged by any other party.
5. On 20 July 2021, the Director refused the Application (“**Director’s Decision**”) on the basis that the Applicant failed to discharge its onus under section 36B(4) of the Act, and accordingly did not consider it necessary to consider whether the Applicant had demonstrated that the grant of the Application was in the public interest for the purposes of section 38(2) of the Act.
6. On 19 August 2022, the Applicant applied for a review of the decision of the Director pursuant to section 25 of the Act (“**First Review**”), with such decision to be made by the Commission by way of hearing.
7. The Commission heard the application for the First Review on 14 November 2022.
8. On 21 June 2023, the Commission affirmed the decision of the Director to refuse the Application: *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* (LC 09/2023) (“**Earlier Commission Decision**”). The Commission refused the Application on the grounds that the Applicant had failed to discharge its onus under section 36B(4) of the Act, however the Commission also found that the Applicant had satisfied the public interest test under section 38(2) of the Act.
9. On 12 July 2023, the Applicant filed an appeal notice with the Supreme Court of Western Australia (“**Supreme Court**”) to appeal the Earlier Commission Decision on a question of law.
10. On 23 April 2024, Justice Lemonis allowed the appeal.
11. On appeal, the Earlier Commission Decision to dismiss the Applicant’s application for the conditional grant of a liquor store licence in respect to Liquorland Southern River East was quashed: *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2024] WASC 128 (“**Liquorland SRE Decision**”).

12. The following principles relevant to this Application for Review emerged from the reasons for the decision of Lemonis J in the Liquorland SRE Decision:
- a) there is no *de minimis* threshold for a consumer requirement for the purposes of section 36(B)(4) of the Act and no need to establish a ‘considerable’ requirement, although a ‘relatively minor requirement’ is a factor that might warrant refusal of an application in the public interest under section 33 or section 38 of the Act;¹
 - b) the task of assessing consumer requirements is one that invites inferential reasoning, and:
 - i. when using inferential reasoning, particular evidence and categories of evidence are not to be considered on a standalone or piecemeal basis, but rather, the collective force of the evidence is to be considered;
 - ii. in deciding whether an inference is made out, all of the circumstances are to be considered and weighed as a whole, including any notorious facts;²
 - c) future population growth and consumer requirements are (generally speaking) not relevant, although it is relevant to take into account future population growth where it is sufficiently certain and proximate in time to the making of the application that it in effect forms part of the extant requirements;³
 - d) the analysis under section 36B(4) of the Act is not at large in respect of all consumer requirements, but is to be conducted by reference to the particular consumer requirements that correlate to the products and services which the new premises are intended to provide, and the necessary starting point for each analysis is that the requirement to be assessed may be relatively modest in quantitative terms;⁴
 - e) the first step in considering consumer requirements would ordinarily be to identify the parameters of the requirement, ordinarily including a broad approximation of the likely numbers of consumers for liquor in the locality, and a broad assessment of the nature and scope of their relevant requirements;⁵ and
 - f) a local packaged liquor requirement cannot be some requirement at or in relation to a specific place within a locality, although a particular destination within a locality such as a shopping centre may affect assessment of consumer requirements because it may increase the number of consumers coming to the locality.⁶

¹ *Liquorland SRE Decision* at [132] – [136]

² *Liquorland SRE Decision* at [181] – [187]

³ *Liquorland SRE Decision* at [168] – [170]

⁴ *Liquorland SRE Decision* at [58], [59]

⁵ *Liquorland SRE Decision* at [140]

⁶ *Liquorland SRE Decision* at [198] – [200]

13. His Honour also confirmed at [62] and [197] the locality principles established in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (“**Liquorland Karrinyup Decision**”) to the effect that:
 - a) locality primarily connotes the concept of neighbourhood, which is the area surrounding and geographically close to the proposed site;
 - b) the shape and size of the locality may be influenced by topographical features, accessibility, and the geographical spread of the community in the area of the proposed site; and
 - c) locality is not to be determined by reference to retail catchment area.
14. His Honour also observed at [197], that locality is understood to comprise a neighbourhood, that a factor pointing to a neighbourhood is ease of movement in and around a particular area, and therefore, that the scheme of section 36B(4) of the Act recognises that existing packaged liquor outlets will be readily accessible to those in, or coming to, the locality as a whole.
15. On 26 April 2024, Justice Lemonis in the Liquorland SRE Decision, issued orders to (amongst other things):
 - a) allow the appeal;
 - b) quash the decision of the Earlier Commission Decision;
 - c) remit the matter back to the Commission differently constituted for reconsideration; and
 - d) a direction for the Commission to permit the Applicant to adduce further evidence in relation to issues relevant to the public interest, and the issues arising under section 36B(4) of the Act, provided any further evidence is not to be adduced for the purposes of raising new issues which could reasonably have been raised when the Application was first made.
16. The Applicant’s application was remitted back to the Commission for reconsideration in accordance with the reasons for decision in the appeal giving rise to the Liquorland SRE Decision.
17. The matter was heard before the Commission on 19 November 2024.

SUBMISSIONS

Submissions from the Applicant

18. The Application for a liquor store licence at the Southern River Square Shopping Centre is remitted to the Commission for reconsideration following the Supreme Court’s decision in *Liquorland Southern River*, which quashed the Commission’s earlier affirmation of the Director’s refusal. The Supreme Court found errors in the Commission’s treatment of locality and consumer requirement reasoning and directed that the Applicant be permitted to file further evidence relevant to both public interest considerations and the statutory test under section 36B(4) of the Act. The present submissions synthesise both the earlier and newly adduced evidence and apply the principles clarified by Lemonis J.

19. At the core of the Application is a significant and longstanding gap in the distribution of packaged liquor outlets in the Southern River locality. Whereas the packaged liquor needs of residents in Canning Vale, Huntingdale, Gosnells and north-western Southern River are well served, there is no comparable access point near the Southern River Square Shopping Centre nor anywhere south of it. This unequal distribution is visually confirmed on MGA's locality mapping. The Application would fill that gap and deliver a facility that aligns with contemporary consumer shopping habits, expectations, and neighbourhood-activity-centre planning principles.
20. The Supreme Court's decision establishes several governing principles for the reconsideration:
 - a) First, there is no *de minimis* threshold for establishing consumer requirements under section 36B(4) of the Act. Even modest requirements may satisfy the statutory test, although the scale of the requirement may influence the public interest assessment.
 - b) Second, the identification and assessment of consumer requirements is an exercise in inferential reasoning that must account for the overall weight of evidence rather than isolated data points.
 - c) Third, while future population growth is generally irrelevant, it becomes relevant where the growth is sufficiently proximate and certain such that it effectively forms part of extant requirements.
 - d) Fourth, consumer requirement analysis must correlate specifically to the services and products offered by the proposed outlet.
 - e) Finally, locality is to be understood primarily through the concept of *neighbourhood*, characterised by geographical closeness, ease of movement, and community integration - rather than retail catchments.
21. The Applicant contends that the evidence confirms major demographic and commercial changes since the Application was first considered.
22. Census data demonstrates that the population within the MGA-defined locality increased by 27% between 2016 and 2021, with particularly rapid growth in the Southern River East area. Significant new residential estates - Ambia, Riverbank and Holmes Central - have been developed, and all have expressed support for the Application. The Centre itself has evolved into a vibrant neighbourhood activity centre, with strong trading at Coles (averaging 13,590 weekly transactions) and more than 800,000 annual visitor entries. These data points reflect both current and continuing population intensification and reinforce the Centre's status as a natural focal point for neighbourhood shopping.
23. The Applicant contends that evidence also comes from the McGregor Tan intercept survey, conducted after the Centre opened. From 318 systematic random sample interviews, 70% of all respondents supported the proposed store and 90% of packaged liquor consumers said they would purchase from it, with many indicating fortnightly usage. The survey shows strong expectations for co-location of liquor outlets with full service supermarkets and confirms that convenience, proximity, and one-stop shopping are the dominant drivers of consumer preference. Importantly, 72% of respondents surveyed were from within the MGA-defined

locality, making the results directly probative of local requirements. These findings reinforce and replicate results from the earlier DAA door-to-door survey, conducted when the Centre was not yet open.

24. The evidence also includes Flybuys data showing that the absence of a liquor store adjacent to Coles has been a top consumer complaint at the Centre for multiple consecutive quarters - between 23% and 27.7% of surveyed shoppers - far above the national average of 5-6%. This highlights a persistent and significant consumer frustration relating specifically to the absence of a co-located liquor facility and supports the inference that the current distribution of packaged liquor outlets does not meet consumer expectations.
25. Turning to the locality issue, the Applicant relies on MGA's expert evidence identifying Balfour Street as the logical north-western boundary, Tonkin Highway as the clear southern and south-eastern boundary, Southern River reserve as the eastern boundary, and parks/reserves west of Ranford Road completing the locality. MGA's boundaries are supported by topographical impediments to access, community facility clustering, and the principle that neighbourhoods are defined by both internal cohesion and external demarcation. The Director's suggested boundaries, by contrast, produce an implausibly large area lacking the necessary neighbourhood characteristics and failing the "ease of movement and accessibility" test recognised in the Liquorland Karrinyup Decision and reaffirmed by Lemonis J.
26. If the Commission accepts MGA's locality, no existing packaged liquor stores lie within it, meaning section 36B(4) of the Act is not engaged. Even if the Commission adopts a larger locality that includes one or more existing stores, the evidence demonstrates that none of those stores can reasonably satisfy the proven consumer requirements. Distances from the Centre to the nearest existing stores range from 2.6 km to 3.8 km, with even greater distances for residents south of the Centre. These stores either operate as destination outlets (e.g., Dan Murphy's), lack comprehensive range (e.g., ALDI), or are located within other neighbourhoods whose supermarket-liquor pairings do not service the Centre's catchment. Under the principles articulated in Liquorland Karrinyup Decision, "reasonably" requires a sensible, moderate, contemporary standards-based assessment - not merely theoretical availability. On this standard, the existing stores cannot be regarded as reasonably meeting local requirements.
27. The consumer requirement in this case is two-fold: the requirement for the *convenience of proximate access to liquor*, and the requirement for *one-stop shopping at the Centre*. Both requirements are strongly supported by survey data, consumer behaviour patterns, and the lived experience of users of the Centre. The evidence shows that consumers use the Centre as their primary neighbourhood shopping destination and that many wish to purchase liquor when undertaking grocery trips. The strength of this requirement is well above the "relatively modest" threshold contemplated by the Supreme Court.
28. State Planning Policy 4.2 further supports the Application. The Centre functions as a neighbourhood activity centre, servicing a rapidly growing population that fits within typical catchment expectations for such centres. The presence of a convenience-style liquor outlet is consistent with planning objectives that encourage co-location of essential daily and weekly shopping trips. In planning terms, the absence of a liquor store at the Centre is anomalous when compared with other comparable activity centres across Perth. The inclusion of the

proposed store would reduce vehicle kilometres travelled, limit cross-neighbourhood traffic, and improve overall amenity by keeping residents' shopping trips local.

29. The public interest assessment, viewed holistically, strongly favours approval. There is no evidence of increased risk of alcohol-related harm. The residential estates, the Centre owners, multiple individual submitters, and strong survey results all demonstrate community support and alignment with consumer needs. The pattern of contemporary standards - reflected in survey evidence, planning policy, and supermarket-liquor colocation norms - shows that granting the licence would meet clear community expectations and correct a longstanding service gap.
30. Applying section 36B(4) of the Act, and assuming for the sake of argument that existing stores lie within the locality, those premises cannot reasonably satisfy the requirements identified. They are too distant, too functionally mismatched, or too inconvenient to meet the needs of consumers who live near and to the south of the Centre or who routinely attend it. The proposed store would offer a materially different and more appropriate service. Contemporary expectations for convenience and one-stop shopping heighten the unreasonableness of requiring residents to travel substantially further than residents of nearby neighbourhoods must travel for comparable services.
31. The evidence therefore supports the conclusion that consumer requirements cannot reasonably be met by existing premises - regardless of the precise locality adopted - and that the proposed liquor store would meet strong, demonstrated local requirements without compromising harm-minimisation objectives. The Commission should conclude that both the public interest and the statutory test are satisfied.

Submissions from the Director

32. The Director submits that the application for a liquor store licence at Southern River Square Shopping Centre must be dismissed because the Applicant has not satisfied the mandatory "consumer requirements condition" in section 36B(4) of the Act. This statutory condition prohibits the grant of a licence unless the Commission is satisfied that packaged liquor requirements within the relevant locality cannot reasonably be met by existing premises. The Director relies on the Supreme Court's reasoning in *Liquorland Southern River*, which held that this inquiry must be undertaken by reference to the locality as a whole, not to a specific destination within it.
33. The Director emphasises that the Supreme Court explicitly rejected the Applicant's argument that consumer requirements can be defined as a requirement for packaged liquor *at the Centre or as part of shopping at the Centre*. Ground 5 of the Applicant's earlier appeal, which attempted to frame the demand side of section 36B(4) of the Act around a specific location within the locality, was dismissed by Justice Lemonis as impermissible, unbalanced, and inconsistent with the legislative purpose of preventing the proliferation of packaged liquor outlets. The Director submits that the Applicant is improperly attempting to revive that same location-specific argument.
34. The Director identifies the proper locality as materially larger than the one advanced by the Applicant. Based on topographical features, regional roads, access patterns, survey evidence, and the principles articulated in *Liquorland Karrinyup* and *Liquorland Southern River*, the Director submits that the locality is bounded by Warton Road to the northwest,

Ranford Road to the southwest, Corfield Street to the east and northeast, and the developed portions of Southern River up to Tonkin Highway to the south. This locality properly reflects neighbourhood patterns, community spread, and ease of movement.

35. The Director argues that Balfour Street is not a genuine locality boundary. MGA's updated reliance on Balfour Street as a "significant" separator was unsupported by reasoning and contradicted by MGA's own earlier findings - which described the adjoining reserve as not limiting accessibility due to Barrett Street running through it. Furthermore, the Applicant's own evidence showed that residents north of Balfour Street regularly cross it to shop at Southern River Square, demonstrating that it is not perceived as a barrier. The Director therefore rejects the northwestern boundary proposed by the Applicant as artificially restrictive.
36. The Director likewise submits that the Southern River itself is not an eastern boundary. Survey results demonstrate that residents on the far side of the river frequently use the Centre, with 96% of respondents from the relevant region indicating they would cross the river to shop at Southern River Square. Southern River Road provides direct access, making the river permeable rather than barrier-creating. Consequently, Corfield Street is the more appropriate locality boundary in the northeast.
37. A further weakness in the Applicant's locality evidence is the statistical unreliability that results when large segments of the DAA survey sample are excluded. Restricting the locality as the Applicant proposes would eliminate more than half of all survey respondents, rendering the sample size inadequate against the DAA report's own methodological requirements. The Director submits that this demonstrates that the Applicant's locality construction is not only conceptually flawed but also empirically unsustainable.
38. Turning to consumer requirements, the Director accepts that there exists some level of consumer preference for one-stop shopping. However, the Director maintains that the extent of this requirement is limited. The DAA survey concluded that only 62% of respondents had purchased packaged liquor in the previous 12 months - lower than in comparable surveys - while 38% purchased none at all, partly reflecting local demographic characteristics. This demonstrates a lower than average baseline requirement for packaged liquor in this locality.
39. Furthermore, survey evidence shows that 70% of liquor purchasers prefer to buy liquor as part of a dedicated trip rather than with groceries, and 40.6% identified a dedicated liquor trip as the *most important* method. This pattern aligns with the fact that nearly half of all respondents who purchased liquor identified Dan Murphy's - a destination outlet - as their main store. These results show that the consumer base in this locality exhibits a preference for destination purchasing over co-located convenience shopping.
40. The Director highlights that approximately 70% of respondents indicated they would purchase liquor from the proposed store "never" or only "a few times a year or less." This suggests that the level of demand for the proposed store's services is modest at best. While the Applicant emphasises other survey findings, the Director maintains that the McGregor Tan results - conducted exclusively within the Centre - are less reliable as indicators of locality-wide requirements and risk inappropriately narrowing the statutory demand inquiry.
41. The Director further submits that the Applicant's reliance on consumer "expectations" that liquor stores be co-located with supermarkets is misplaced. Such expectations do not equate to statutory consumer requirements under section 36B(4) of the Act. Preferences or

expectations - particularly when recorded within a centre heavily patronised by shoppers - cannot be equated with locality-wide needs, nor do they alone justify displacing existing, adequate supply.

42. The Director asserts that the new evidence of population growth and the age of nearby liquor stores is irrelevant. Section 36B(4) of the Act requires a point-in-time analysis of current consumer requirements, not a forecast of future needs. The fact that stores opened before the 2018 reforms does not diminish their relevance to the supply-side assessment; if anything, the number of stores underscores the oversupply concerns that section 36B of the Act was enacted to address.
43. In assessing existing packaged liquor services, the Director identifies five stores within the locality that collectively provide a wide distribution of supply: Ashburton Liquor Store, Cellarbrations Huntingdale, Dan Murphy's, ALDI Southern River, and Liquorland Southern River. These outlets provide a range of product types, shopping environments, and co-location opportunities, including two co-located with supermarkets and one destination store with extensive range and regional draw.
44. The Director argues that these outlets together reasonably meet both general packaged-liquor requirements and the limited requirement for convenience shopping. Cellarbrations Huntingdale is co-located with an IGA; Liquorland Southern River is co-located with Coles; ALDI offers co-located liquor; and Dan Murphy's provides extensive range and is adjacent to both ALDI and The Vale Shopping Centre. This network of stores provides multiple practical one-stop or proximate shopping options.
45. The Director emphasises that section 36B(4) of the Act does not require existing stores to provide identical services to the proposed store; the statutory test is whether existing stores can *reasonably* meet requirements. In this context, "reasonably" means sensibly, rationally, and without absurdity, having regard to contemporary expectations. The Director contends that the existing supply clearly meets the modest consumer requirements identified in this locality.
46. The Director also rejects the Applicant's claim that existing stores are "too far" from the Centre or from residents south of the Centre. Distance from the Centre is irrelevant to the analysis because the Supreme Court has ruled that requirements must be assessed across the entire locality, not relative to a specific shopping centre. Moreover, car use is overwhelmingly dominant in the locality, and survey evidence confirms that residents traverse the area easily, including crossing the Applicant's proposed boundaries.
47. According to the Director, the Applicant's approach - assessing both demand and supply by reference to the Centre - would fundamentally undermine section 36B(4)'s protective purpose by ignoring adequate supply located elsewhere within the locality. This approach, if accepted, would allow applicants to artificially isolate a node within a locality and treat requirements at that node as determinative, a method expressly rejected by *Lemonis J.*
48. The Director also notes that several of the Applicant's locality-supporting submissions are inconsistent with evidence showing that residents across the wider area - including those outside the Applicant's proposed boundary - use the Centre regularly. This further confirms that the locality is broader than the Applicant contends and reinforces the need for a locality-wide demand analysis.

49. Ultimately, the Director maintains that the locality has a lower than average packaged liquor requirement, with a limited convenience-based requirement that is already reasonably accommodated by existing stores. There is no demonstrated gap in supply, nor any statutory basis for finding that current consumer requirements cannot reasonably be met by existing premises.
50. Taking into account all of the above, the Director submits that the Applicant has failed to satisfy the consumer requirements condition in section 36B(4) of the Act. Given that this condition is mandatory and operates as a statutory “gateway” to any grant of licence, the Commission must affirm the Director’s decision of 20 July 2022 and dismiss the Application.
51. The Director concluded by requesting orders affirming the original decision, dismissing the application for review, and making no order as to costs, consistent with the Director’s overall position that both the demand and supply conditions in section 36B(4) of the Act are fully satisfied within the existing marketplace.

LEGAL AND STATUTORY FRAMEWORK

52. 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).
53. On review pursuant to section 25 of the Act, the Commission may:
 - a) affirm, vary or quash the decision of the Director (section 25(4)(a));
 - 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 (section 25(4)(b));
 - c) give directions:
 - i. as to any questions of law reviewed; or
 - ii. to the Director, to which effect shall be given (section 25(4)(c)); and
 - d) make any incidental order (section 25(4)(d)).
54. 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)).

55. 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)).
56. 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 Respondent (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, [55] (Buss JA)).
57. In addition, the Director is obliged to comply with the requirements of procedural fairness when exercising the powers conferred by the Act (*Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356).
58. As explained in the Liquorland Karrinyup Decision at [2], an applicant for a liquor store licence must satisfy the licensing authority (being either the Director or the Commission depending on context) of two things:
 - 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 (the **Consumer Requirements condition**); and
 - b) that the grant of the application is in the public interest (the **Public Interest condition**).
59. Each criterion is explained below.

Consumer Requirements condition

60. The Consumer Requirements condition is imposed by section 36B(4) of the Act, which provides:

“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.”
61. Section 36B(4) of the Act was considered at length in the Liquorland Karrinyup Decision. Justice Archer found that its purpose was to ensure that an additional licence would only be granted where consumer requirements could not reasonably be met by the existing premises (and in the context of there also being a Public Interest condition) (Liquorland Karrinyup Decision [74]).
62. To apply the test, the Commission is required to consider whether, having regard to the objects of the Act that arise on the evidence or by notorious fact (including the object of catering 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), it is satisfied that the requirements of consumers for packaged liquor in the relevant locality cannot reasonably be met by existing packaged liquor premises in that locality (Liquorland Karrinyup Decision [101]).

63. The test is objective and requires the Commission to be satisfied that the requirements of consumers for packaged liquor in the locality cannot sensibly or rationally be met by existing premises (Liquorland Karrinyup Decision [104], [131], [134]).
64. Consideration of 'requirements of consumers for packaged liquor' in section 36B(1) of the Act allows consideration of the same types of matters as are relevant to section 5(1)(c) of the Act (Liquorland Karrinyup [89], [102]). Relevant matters are not limited to the physical item or product of packaged liquor and can include convenience, product range, service and efficiency (Liquorland Karrinyup Decision [106], [108]).
65. The term 'locality' in section 36B(4) of the Act connotes the concept of neighbourhood, and denotes an area that surrounds, and is geographically close to, the location of the proposed premises, rather than the area(s) from which consumers would come, and to which the retail catchment area can be a relevant consideration (Liquorland Karrinyup Decision [181], [182], [188]).
66. Justice Archer also explained that the shape and size of a locality may be influenced by topographical features (including man-made features such as roads) and the areas from which the proposed site could be accessed reasonably easily on foot or push-bike. If there is a community in the area of the proposed site, the geographical spread of that community may also influence the shape and size of the locality (Liquorland Karrinyup Decision [185]).

Public Interest condition

67. 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.
68. 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.⁷
69. Further, the expression 'in the public interest', when used in a statute, imports a discretionary value judgment (*O'Sullivan v Farrer* [1989] HCA 61).
70. When determining whether an application is in the public interest, the Commission must take into account:
 - a) the primary objects of the Act set out in section 5(1):
 - i to regulate the sale, supply and consumption of liquor; and
 - ii to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - iii 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; and

⁷ *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70 per Tamberlin J [9]

- b) the secondary objects of the Act set out in section 5(2):
 - i 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
 - ii to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - iii to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
71. Section 38(4) of the Act provides that the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include:
- a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor [subsection (a)];
 - b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated [subsection (b)];
 - c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises [subsection (c)]; and
 - d) any other prescribed matter [subsection (d)].
72. No 'other ... matter' has been prescribed pursuant to section 38(4)(d).
73. The Public Interest condition requires the Commission to consider the positive and negative aspects of the Application and how the Application will promote the objects of the Act (Liquorland Karrinyup Decision [31]). The risk of negative consequences such as harm or ill-health, the reduction of amenities in the locality, and offence to those who live or work there may be considered, as well as the effect the granting of the licence may have in relation to tourism or community or cultural matters (Liquorland Karrinyup Decision [105]).
74. The Commission must consider how an application will promote the object of the Act to 'cater for the requirements of consumers and related services, having regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State' (see section 5(1)(c) of the Act; Liquorland Karrinyup Decision [32]). This in turn requires the Commission to consider:
- "...whether, having regard to all of the evidence and any notorious facts,there were consumer requirements in the [relevant] locality for the range of liquor products and services which the appellant proposed to provide and whether, in all the circumstances, it was 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 reflected the diversity of consumer requirements"* (Liquorland Karrinyup Decision [33] citing *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227)).

75. There are two stages in determining whether the grant of an application is in the public interest.
76. First, the Commission must evaluate the evidence and make findings and draw conclusions from the evidence; and second it must apply the public interest criterion to the relevant circumstances, in particular the findings it has made, and the conclusions it has drawn (*Woolworths v Director of Liquor Licensing* [2013] WASCA 227 [55] (Buss JA); *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 [41]). This includes, where relevant, findings specifically identifying the existing level of harm and ill-health in the relevant area due to the use of liquor; and about the likely degree of harm to result from the grant of the application, to be assessed against the existing degree of harm. The Commission must then weigh the likely degree of harm as assessed, together with any other relevant factors (both positive and negative) to determine whether the Applicant has established that it is in the public interest to grant the application (*Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 [42])).
77. Determining the public interest is a discretionary value judgment to be made having regard to the objects of the Act (Liquorland Karrinyup Decision [34], [105]; *Woolworths v Director of Liquor Licensing* [2013] WASCA 227 [48] (Buss JA)). In exercising its broad discretion, it is for the Commission to decide what weight it will give to the competing interests and other relevant considerations under the Act (*Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356 [37] (Templeman J); *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 [36] (Heenan J)).

DETERMINATION

78. 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 and the Director in this Application for Review.
79. The Commission is aware of the order of Lemonis J that has granted the Applicant permission to adduce further evidence provided that the further evidence is not adduced for the purpose of raising new issues which could reasonably have been raised when the Application was first made.
80. The Commission finds that there was no evidence (including the evidence referred to in [21] to [23] above) before the Commission adduced by the Applicant which fell within the category of evidence adduced for the purpose of raising new issues which could reasonably have been raised when the Application was first made and.
81. The Director has submitted that the Applicant must satisfy the Commission of two things.
82. First, 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 ("**Consumer Requirements condition**").

83. Secondly, that the grant of the Application would be in the public interest (“**Public Interest condition**”).
84. The Commission accepts that submission.
85. The Commission addresses those 2 conditions as follows.

Consumer Requirements condition

86. Section 36B(4) of the Act requires a structured four-stage analysis and requires the Commission to make findings in relation to four matters when making a determination under section 36B(4) of the Act which can be framed as the following four issues:
- a) What is the relevant locality? The Commission is to identify and then make a finding as to the relevant locality for this case.
 - b) What are the requirements of consumers for packaged liquor in the relevant locality? The Commission is to identify the requirements of consumers for packaged liquor in the relevant locality and then make a finding of the requirements of consumers for packaged liquor in that locality.
 - c) What packaged liquor services are provided by existing packaged liquor premises in the relevant locality? The Commission is to identify the services already provided by existing outlets in the locality and make a finding of what packaged liquor services are provided by those existing packaged liquor premises in the relevant locality.
 - d) The Commission assessing whether the local packaged liquor requirements of consumers within the locality cannot reasonably be met by those existing packaged liquor premises.

The relevant Locality

87. 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.
88. The concept of ‘locality’ was considered in both the Liquorland Karrinyup Decision and the Liquorland SRE Decision.
89. In the Primary Submissions made by the Director, the Director states that the following propositions emerge from the Liquorland Karrinyup Decision and the Liquorland SRE Decision in relation to the meaning of ‘locality’:
- a) the word "locality" in section 36B denotes an area that surrounds, and is geographically close to, the location of the proposed premises;
 - b) it is intended to connote the same concept of neighbourhood and in that context means the geographical area surrounding the proposed site;
 - c) the legislature intended to capture the geographical area surrounding, and relatively close to, the proposed site, being the neighbourhood of the site;

- d) the shape and size of the locality may be influenced by topographical features (including man-made features such as roads) and areas from which the proposed site could be accessed reasonably easily on foot or push-bike;
 - e) if there is a community in the area of the proposed site, the geographical spread of that community may also influence the shape and size of the locality;
 - f) it is impossible to prescribe a specific test to be applied or even an exhaustive list of the factors that will or may be relevant in the determination of the locality in any given case; and
 - g) the locality is not to be determined by reference to a retail catchment area. However, a retail catchment area may still be of relevance, for example in illuminating the ease of access to the proposed site.
90. In the Liquorland SRE Decision, Lemonis J commented that it is important that the chosen area reflects a locality in the sense required by the Act. In some cases, this may require an adjustment of what might initially be thought to be appropriate boundary delineations to ensure that the selected area aligns with the concept of a locality [64].
91. The Commission's role is to determine the boundaries of the locality because *'it would only be possible to discern what existing stores are in the locality by delineating its boundaries'* (Lemons J Liquorland SRE Decision [64]).
92. The Commission has considered the following non-exhaustive factors in deciding the locality in this case:
- a) the geographical area surrounding the site;
 - b) the topographical features of the area, including natural and man-made barriers; and
 - c) the geographical spread of the community.
93. It is asserted by the Applicant in the Applicant's Primary Submissions at [22], that: *"Any suggestion that the locality should be larger than identified by MGA can be tested by asking whether there would be ease of movement and ready accessibility within that proposed locality, such as might be expected in a 'neighbourhood.'* *The Applicant's case is that a locality larger than that identified by MGA would no longer have the closeness, ease of movement and ready accessibility that characterises a neighbourhood. In this regard, it is relevant to note that State Planning Policy 4.2 (which is the primary expression of the WA Government's policy regarding activity centres) identifies the expected function of neighbourhood activity centres, including that they have an indicative catchment of only 1km. Whilst that is not determinative of locality in any case, it is a relevant factor in testing the appropriateness of any proposed locality'.*
94. Further the submission by the Applicant at [19] of the Applicant's Primary Submissions that *"treating Warton Road as the northwest boundary of a locality in which the Centre is located simply because it is a major road pays little regard to the centrality of the neighbourhood, community and geographic closeness concepts identified in Liquorland Karrinyup"* on the grounds set out at [19(a) to (h)], [20] to [24], is a submission which the Commission accepts.

95. The Applicant in the Applicant's Primary Submissions at [24] states that: "*There is no expert evidence to contradict MGA's opinion, which is evidence based, applies the principles identified by the Court in a reasoned manner, and reaches an outcome that is consistent with those principles. MGA's evidence about locality should be accepted*".
96. The Commission accepts the expert evidence and opinion of MGA.
97. The Commission refers to the locality proposed by the Director as outlined in the Director's Primary Submissions, where the Director submits that the locality comprises the following boundaries: Warton Road to the north-west, Ranford Road to the south-west and Corfield Road to the east and north-east. The locality extends to the south towards Tonkin Highway, to the extent that it is developed (**Director's Proposed Locality**).
98. The Applicant submitted at the hearing that the Director's Proposed Locality is '*really just too large to plausibly be a locality by looking at the distance from any spot within the suggested locality to any other spot within the locality and seeing just how far apart they are*'.
99. The Applicant submitted that '*if someone who decides to go for a stroll around the neighbourhood, if they are starting in the southern corner near...the Forrestdale side and...decided to walk from there to the northern corner, the northern extremities of the contended locality, they are not going for a stroll around the neighbourhood, they are going for a hike. it would be a return trip of 14 kilometres or more, and that is if you could walk in straight line ...*'.
100. The Applicant further submitted at the hearing that the Director's Proposed Locality is implausibly large, is inconsistent with the expert evidence and does not apply the criteria that was set out by the Court in both the Liquorland Decision and the Liquorland SRE Decision. The Commission accepts that Submission.
101. Having regard to the submissions made by the Applicant and the Director in respect to what is the locality for the purposes of this case, the locality proposed by MGA is accepted by the Commission and the Commission finds that for this case, the locality ("**Locality**") is as follows:
- a) The Commission finds that Tonkin Highway is a major man-made barrier which serves to define the south and the south-east boundary of the locality;
 - b) The Commission finds that Balfour Street delineates the north and north-west boundary of the locality;
 - c) The Commission finds that the west and south-west boundary of the locality is determined firstly by reference to Ranford Road (at the intersection of Ranford Road and Tonkin Highway), with the locality boundary moving to the east of Ranford Road (following the natural boundaries created by parks and reserves) until reaching Balfour Street; and
 - d) The Commission finds that the south east, east and north east locality boundaries are determined primarily by reference to the Southern River reserve, which, in the Commission's view is an obvious natural boundary that is crossed by only one bridge (on Southern River Road).

The requirements of consumers for packaged liquor in the locality

102. Lemonis J held in Liquorland SRE Decision that:

- a) the analysis under section 36B(4) is not at large in respect of all consumer requirements, but is to be conducted by reference to the particular consumer requirements that correlate to the products and services which the new premises are intended to provide, and the necessary starting point for each analysis is that the requirement to be assessed may be relatively modest in quantitative terms;
- b) there is no *de minimis* threshold for the establishment of a consumer requirement, although a relatively minor requirement is a factor that might warrant refusal of an application in the public interest;
- c) the fact that demand for a unique type of liquor may be trivial in terms of quantity would not of itself be a ground for refusing an application;
- d) section 36B(4) does not require an applicant for a liquor store licence to establish a 'considerable' consumer requirement;
- e) section 36B(4) requires a consideration of the requirements only of the extant population, although where there is population growth that is sufficiently certain and proximate in time to the making of the application, that may in effect form part of the extant population; and
- f) a local packaged liquor requirement cannot be some requirement at or in relation to a specific place within a locality, although a particular destination within a locality such as a shopping centre may affect assessment of consumer requirements because it may increase the number of consumers coming to the locality.

103. As stated by the Applicant in the Applicant's Primary Submissions at [44], "*The Applicant's case requires a consideration of the proven consumer requirements in relation to the proposed new store, contemporary consumer expectations and standards, and the distribution of existing liquor stores and the services they provide*".

104. The Applicant submits that the evidence in this case establishes several local packaged liquor requirements:

- a) firstly, the requirement for the convenience of being able to purchase packaged liquor at the Centre; and
- b) secondly, the requirement for the convenience of being able to one-stop/one trolley shop for groceries and liquor at the Centre.

105. The Commission accepts those submissions.

106. The Applicant further submits that there is a contemporary standard and expectation that consumers will have convenient access to retail outlets for the supply of daily and weekly items including packaged liquor.

107. The Commission accepts that submission.

108. The Applicant further submits that there is a contemporary standard and expectation for one-stop shopping for groceries and liquor and submits that this is acknowledged as a notorious fact in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 at [78].
109. The Commission accepts that submission.
110. The Commission finds that the local packaged liquor requirements of consumers are as follows:
- a) the requirement for the convenience of being able to purchase packaged liquor at the Centre; and
 - b) the requirement for the convenience of being able to one-stop/one trolley shop for groceries and liquor at the Centre.
111. The Applicant however submits that this case is not just about one-stop shopping; it is also about residents having convenient access to liquor.
112. The Commission accepts that Submission.
113. The Director submitted that the Commission should find that the requirement for package liquor in the locality is lower than average.
114. Further the Director submitted that there is a requirement for “one-stop” or convenience shopping but qualified that submission with a further submission that the extent of that consumer requirement is properly characterised as limited.
115. The Commission does not accept those submissions.
116. *Lemonis J* held in the *Liquorland SRE Decision* amongst other things that:
- a) the analysis under section 36B(4) of the Act is not at large but is to be conducted by reference to the particular consumer requirements that correlate to the products and services which the new premises are intended to provide and the necessary starting point for each analysis is that the requirement be assessed may be relatively modest in quantitative terms;
 - b) there is no *de minimis* threshold for the establishment of a consumer requirement, although a relatively minor requirement is a factor that might warrant refusal of an application in the public interest.
117. The Commission is entitled to find and does find, that there is a requirement for the convenience of being able to purchase packaged liquor and the convenience of being able to one-stop/one trolley shop for groceries and liquor, at the Centre.

The packaged liquor services already in the Locality

118. This issue requires the Commission to assess what packaged liquor services are provided by the existing packaged liquor services in the Locality.
119. The Commission must assess the packaged liquor services in the entire Locality.

120. The Director states in the Director's Primary Submissions at [67] and [68], that the initial MGA report contains a map showing the locations of 6 packaged liquor stores within a 3km radius of the proposed store (that is the Centre) and identifies 5 of those stores within the locality as follows:
- a) Ashburton Liquor Store.
 - b) Cellarbrations Huntingdale Forum.
 - c) Dan Murphys.
 - d) ALDI Southern River.
 - e) Liquorland Southern River.
121. The Director also states in the Director's Primary Submissions at [69] that BWS Southern River is not in the locality (*viz. as determined by the Director*).
122. Having regard to the finding of the Commission of the Locality, it is clear from the review of Figure 1b (page 1137 of the Bundle) that there are no packaged liquor stores within the Locality.

Whether the local packaged liquor requirements cannot reasonably be met by those existing packaged liquor premises

123. The Commission is now required to determine whether the local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the Locality.
124. The Commission is required to consider whether the requirements "cannot sensibly or rationally be met". In considering whether these requirements can be met, the Commission should have regard to contemporary standards and expectations in relation to requirements for packaged liquor.
125. The Director in the Director's Primary Submissions states that the existing packaged liquor premises in the locality reasonably meet the packaged liquor requirements in the locality. Indeed, consumers in the locality are well served with a mix of stores that cater to a general requirement for packaged liquor.
126. The Commission has found that the Locality for the purposes of this case, has no existing packaged liquor premises in the Locality.
127. The Applicant has submitted that:
- a) the consumers who live in the immediate vicinity of the Centre presently have to drive a considerable distance if they wish to purchase packaged liquor from existing packaged liquor outlets. The distances by road from the Centre to the nearest existing packaged liquor outlets range from 2.6km to 3.8km; (see paragraph 9.2 of MGA's first report (document 3, page 100));

- b) the consumers who live south of the Centre are further away again from the nearest existing packaged liquor outlet, with distances ranging from 3.4km to 4.5km; (MGA's report dated 15 July 2021 (document 29.6) at [1.5] (page 757) and Table 1 (page 758));
 - c) the proven consumer requirement for convenience *per se* in the purchase of liquor is not reasonably satisfied by any of the existing liquor stores, because persons living in that part of the locality comprising the immediate vicinity of the Centre would have to drive at least 2.6km (or 3.4km, if residing south of the Centre) to the nearest existing liquor store.
128. The Applicant submits that it would be unreasonable to expect those consumers to travel a minimum of 2.6km or 3.4km to purchase liquor is apparent simply from looking at the locality map (figure 1b in MGA's report: document 54, page 1137).
129. The Applicant further submits that the locality map depicts a semi-circle of liquor stores which together provide very close and convenient access to liquor for residents who live in neighbourhoods in Gosnells, Huntingdale, Canning Vale and the pocket of Southern River (to the west) on and near Ranford Road. The Commission accepts that submission.
130. The Applicant states that:
- a) it is equally obvious from the locality map that there is an *absence* of liquor stores near the Centre and most particularly south of the Centre;
 - b) the locality map shows an obvious gap and inequality in the distribution of liquor stores;
 - c) relatively speaking (that is, relative to the position referred to in [130b] above) there are no nearby packaged liquor outlets for the residents who live close to, or south of, the Centre; and
 - d) even if the closest packaged liquor premises to the Centre and residential areas south of the Centre are within the same locality, they are too far away to reasonably meet the requirements of residents near and to the south of the Centre.
131. The Applicant submits that that the conclusion in [130d] above is strongly supported by the survey evidence. The Applicant submits that the Commission should infer that the evidence of support and likely usage of the proposed store would not be anywhere near as high as it is if consumer requirements were being reasonably met by existing packaged liquor premises. The Commission accepts that submission.
132. The Applicant submits that a similar analysis applies to the consumer requirement for one-stop shopping for liquor and groceries.
133. The Applicant submits that the evidence establishes that this requirement would not be reasonably met by any of the nearest existing packaged liquor stores, having regard to their location and other characteristics, especially as there are no existing packaged liquor stores in the Locality. In particular:
- a) the nearest packaged liquor store to the Centre is Dan Murphys at the Amherst Village NAC on Warton Road. This is 2.6km by road from the Centre and 3.4km from the centre

point of the residential area to the south of the Centre. Apart from the distance involved, the Dan Murphys is a destination store and does not provide one-stop shopping for liquor and groceries;

- b) the equal nearest packaged liquor store to the Centre is BWS Southern River, which is also located in the Amherst Village NAC and is 2.6km by road from the Centre and 3.4km from the mid-point of the residential area to the south of the Centre. It is adjacent to a Woolworths. However, it is to the north of Warton Road and so on any view is not within any possible locality. The Commission finds that it falls outside of the Locality in any event;
 - c) ALDI Southern River is also located in the Amherst Village NAC, 2.6km from the Centre and 3.4km from the mid-point of the residential area to the south of the Centre. It has a floor area of about 35m², and has a very small range, and consequently, apart from the distance involved, it does not offer a one-stop shopping opportunity of the nature that would be provided if the Application was granted;
 - d) the Ashburton Liquor Bottle'O store at Ashburton Village, is 2.9km by road from the Centre and 4km from the centre point of existing and future residential areas south of the Centre. The store has a floor area of only 60m², and there is no supermarket at Ashburton Village. Consequently, even disregarding the distance involved, it does not offer a one-stop shopping opportunity;
 - e) Cellarbrations at Huntingdale Forum NAC is 2.9km from the Centre by road and 3.9km from the mid-point of the residential area to the south of the Centre. This store is opposite a small IGA supermarket, and consequently, even disregarding the distance involved, it does not offer a one-stop shopping opportunity of the nature that would be provided if the Application was granted;
 - f) Liquorland Southern River, at the Southern River NAC, is 3.8km from the Centre by road, and 4.5km from the mid-point of the residential area to the south of the Centre. It is part of the same shopping centre as a Coles supermarket and consequently does offer a full service one-stop shopping opportunity. However, its distance from the Centre and the residential areas surrounding and to the south of the Centre make it a relatively inconvenient one-stop shopping opportunity for persons who live in those areas.
134. The Commission finds that the survey evidence shows a very strong consumer support for, and usage of, the proposed store and that this gives rise, as submitted by the Applicant, to an obvious and compelling inference, namely, that those support and usage figures would not be as strong as this if the consumer requirement for one-stop shopping was in fact being reasonably met by existing stores which are not in the Locality.
135. As submitted by the Applicant, it does not matter that there are some residents within the Locality who are relatively close to existing packaged liquor premises, and whose requirement for convenience may therefore be reasonably met by those existing premises.
136. The Court made it clear in the Liquorland SRE Decision that an applicant need not establish a quantitatively considerable requirement.

137. As stated by the Applicant, whether or not consumer requirements can reasonably be met by existing premises is ultimately a question of fact and degree that requires a weighing and a balancing of the evidence viewed in totality. 'Reasonably' does not require it to be established that the requirement cannot be met other than with great difficulty or inconvenience. All that is required is that the requirement cannot be met sensibly or rationally or moderately or without absurdity, ridiculousness, extravagance or excessiveness, having regard to community standards and expectations.
138. The Applicant submits that in this case, the location of the nearest existing liquor stores and one-stop shopping opportunities puts those persons who live in the vicinity of the Centre (and even more particularly, those who live south of the Centre) or resort to the Centre in a position of disadvantage and inconvenience relative to those persons who live in surrounding neighbourhoods and who enjoy the convenience of much closer existing packaged liquor premises. It is not reasonable for persons living close to (or to the south of) the Centre to have to travel significantly greater distances to purchase packaged liquor than is required of residents in surrounding neighbourhoods.
139. Finally, the Applicant submits that approaching the evidence in the manner described in the Applicant's Primary Submissions, and taking into account the combination of evidence of very strong consumer support for, and use of, the store, and the evidence of contemporary standards and expectations and the much more convenient access which residents in neighbouring areas have to packaged liquor, that the Commission should conclude that there are no existing premises which can *reasonably* meet the proven consumer requirements of residents in the locality (however defined) for (a) convenience and (b) one-stop shopping. The Commission accepts that submission.
140. Therefore, the Applicant has satisfied the Consumer Requirements condition as set out in section 36B(4) of the Act.

Public Interest Condition

141. "Public Interest" is not defined in the Act.
142. In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227; 45 WAR 446, the Court found that in the assessing whether an application is in the public interest, the licensing authority is bound to take into account the relevant factual matters and the primary and secondary objects of the Act.
143. Although the Commission has an "absolute discretion" to grant or refuse any application under the Act [section 33(1)], this discretion is not an arbitrary or unlimited power and must be exercised consistently with the objects and other provisions of the Act (*Woolworths v Director of Liquor Licensing* (2013) 45 WAR 446 [48]).
144. The Commission must consider the primary and secondary objects of the Act.
145. When determining whether an application is in the public interest the Commission must take into account:
 - a) the primary objects of the Act set out in section 5(1):

- i to regulate the sale, supply and consumption of liquor; and
 - ii to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - iii 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; and
 - b) the secondary objects of the Act set out in section 5(2):
 - i 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
 - ii to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - iii to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of the Act.
146. Each primary object is considered equal and in the event of any consistency between the primary and secondary objects, the primary objects take precedence.
147. There are also considerations in section 38(4) of the Act which the licensing authority *may* also take into account in determining whether granting an application is in the public interest.
148. These key factors are:
- a) the harm or ill-health that might be caused to people, or a group of people, due to the use of liquor;
 - b) the impact on the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened;
 - c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises;
 - d) any effect the granting of the application might have in relation to tourism, or community or cultural matters; and
 - e) any other prescribed matter.
149. In weighing these considerations, tension may arise between the object of minimising harm or ill-health and other objects of the Act.
150. The Director/Intervenor has elected not to make submissions about public interest under section 38 of the Act other than asserting that the proliferation of liquor outlets is not in the public interest.

Requirements of Consumers and Benefits to the Locality

151. The Applicant asserts the Application would provide numerous benefits to the local community including:
- a) Convenience and one-stop shopping;
 - b) Everyday value;
 - c) Benefits of the updated internal layout of the new store;
 - d) Security of the locality; and
 - e) Stocking and promoting of Western Australia Wines.
152. As discussed above the Commission accepts that convenience and one-stop shopping is a benefit to the area and community.
153. The issue of “everyday value” is not considered to be a significant benefit to the community. The other numerous packaged liquor stores in the area already provide “value” by allowing the community to shop and compare prices, with the existing Liquorland presumably already reflecting the same price range.
154. The Commission does not consider that the updated layout of the store provides any meaningful benefit to the locality.
155. The security measures referred to are standard measures that would be generally required with any packaged liquor store of a similar type.
156. In any event, the Application does not appear to have any significant negative effects on the community and locality.
157. With respect to the stocking and promoting of Western Australia wines, this Commission accepts this may provide a limited benefit to the area.

Development of the Liquor Industry, Tourism Industry and Entertainment Industry

158. The Applicant argues that the Application would be consistent with, and reflects, contemporary standards, expectations and shopping habits and is in accordance with the proper development of the liquor industry.
159. The Applicant does not make any additional arguments as to the contribution of the Application to the Tourism or Entertainment Industry.
160. The Commission does not consider that there are any compelling reasons that the Application would not be consistent with the proper development of the liquor and related industries.

Impact on the Amenity of the Area

161. The Applicant asserts that the clustering of retail activities in accordance with local planning laws and objectives, and the consequent reduction of travel enhances the amenity and enjoyment of life within the Locality.
162. 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.

Offence, annoyance, disturbance or inconvenience

163. The Commission is satisfied on the basis of the evidence provided that, despite the high proportion of persons of the Muslim faith in the Locality, and the close proximity of a Muslim place of worship, the grant of the Application will not create 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.

Harm and Ill-Health

164. When assessing harm and ill-health, the Commission must undertake the analysis set out in *Carnegies Realty Pty Ltd, Director of Liquor Licensing* [2015] WASC 208 being the following four steps:
- a) make findings that specifically identify the existing level of alcohol-related harm and ill-health in the Locality;
 - b) make findings about the likely degree of ill-health to result from the grant of the Application;
 - c) assess the likely degree of harm to result from the grant of the Application against this existing degree harm; and
 - d) 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.

Carnegies test – Existing Level of Harm and Ill-health

165. The Chief Health Officer did not intervene in the Application.
166. In the PIA the Applicant asserts that there is a moderate risk to the community due to:
- a) the relatively advantaged score on the SEIFA Index of Relative Socio-economic Advantage and Disadvantage; and
 - b) other economic factors which indicate a relatively affluent and socio-economically advantaged area.
167. Crime statistics and alcohol related health statistics were not of concern within the area.
168. The main groups considered at risk are children and families which make up a high proportion of the community.

169. Given the above, the Commission finds that the current level of harm, and ill-health in the community is relatively low.

Carnegies test -Likely degree of harm and Ill-Health

170. The Applicant asserts that there is no evidence from which it would be inferred that the grant of the Application would contribute to an increased risk of alcohol related harm to the people in the Locality.

171. The Commission finds that there is no evidence provided that would lead to a finding that the grant of the Application would result in any significant increase in the degree of harm or ill-health in the Locality.

Carnegies test – Assessment and weighing of degrees of harm

172. In this case, as the Commission is prepared to accept that only very minimal harm is likely to occur due to the grant of the Application, the Commission finds that in weighing the relevant factors, the grant of the Application is in the public interest with respect to the issue of ill-health and harm.

Public Interest Conclusion

173. The Commission finds that in the absence of evidence, there are no issues as to detrimental effects on amenity of the area, nor evidence of current or potential Ill-health or alcohol related harm that could result from the grant of the Application.

174. In other words, the Commission finds that no significant public interest matters arise and that the Applicant has met its onus to satisfy the Commission that the Application is in the public interest.

CONCLUSIONS

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

176. Accordingly, the Application for the conditional grant of a Liquor Store Licence is granted subject to standard conditions applied to liquor store licences by the licensing authority.

ORDERS

177. The Director’s Decision is quashed and the Application for a Liquor Store Licence is granted.



TONY DI FRANCESCO
PRESIDING MEMBER



JARED BROTHERSTON
MEMBER



MARY BROWN
MEMBER