

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

- Applicant:** Ameera Pty Ltd  
*(represented by Mr Matthew Pudovskis as counsel and Mr Jarrod Ryan of Ryan & Co Solicitors)*
- Respondent:** Liquorland (Australia) Pty Ltd  
*(represented by Mr Stephen Standing as counsel and Ms Triska Di Cicco and Ms Brigette Macfarlane of Herbert Smith Freehills Kramer)*
- Intervenor:** Chief Health Officer  
*(represented by Mr Chamunorwa Madondo of the State Solicitor's Office)*
- Commission:** Mr Jared Brotherston (Presiding Member)  
Ms Mary Brown (Member)  
Mr Tony Di Francesco (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 conditionally grant an application for a liquor store licence for premises known as Liquorland Yanchep
- Premises:** Liquorland Yanchep  
1 Peony Boulevard, Yanchep
- Date of Hearing:** 18 March 2025
- Date of Determination:** 4 May 2026
- Determination:** The Decision of the Director of Liquor Licensing is affirmed with the addition of a further Trading Condition 6 which states: *The removal of the entrance into the Proposed Store from the Coles exit corridor with such works to be completed within 90 days of the Liquor Commission's Decision.*

The Application for Review is dismissed.

**Authorities referred to in determination:**

- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2024] WASC 128
- *South Freo Fresh Pty Ltd v Director of Liquor Licensing & Ors* (LC 13/2020)
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *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
- *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366
- *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

## BACKGROUND

1. This review application (**Application for Review**) is in regard to an application by Liquorland (Australia) Pty Ltd (**Respondent**) for the conditional grant of a liquor store licence (**LL Application**) pursuant to section 47 of the *Liquor Control Act 1988* (**the Act**) in respect of premises to trade as Liquorland Yanchep, located within Stage 2 of the Yanchep Central Shopping Centre, Yanchep (**Proposed store**).
2. The LL Application was lodged on 10 February 2023 and was advertised in accordance with the Director of Liquor Licensing's (**the Director**) instructions.
3. The proposed licence was subject to objection by Ameera Pty Ltd (**Applicant**), the licensee of The Bottle-O Yanchep, which objected on the grounds that the grant would not be in the public interest, would cause undue harm or ill-health due to the use of liquor and would otherwise be contrary to the Act.
4. The Chief Health Officer (**Intervenor**) intervened pursuant to section 69 of the Act to introduce evidence and make representations directed at minimising alcohol-related harm or ill-health.
5. In assessing the harm-minimisation issues raised by the Intervenor, the Director acknowledged concerns regarding the proximity of the Proposed store to the Coles supermarket and the potential inability of supermarket patrons to avoid passing the Proposed store when exiting. However, the Director considered that this store configuration was not new or novel and did not, of itself, present a greater risk of harm or ill-health than other similarly configured premises.
6. The Director considered the Respondent's commitment to display only educational harm-minimisation signage on the dividing wall between the supermarket and the Proposed store, with a focus on preventing underage supply and secondary supply. This commitment was considered relevant to mitigating potential exposure risks.
7. The Director also accepted that the Respondent had voluntarily proposed additional harm-minimisation measures, including the placement of all spirits behind locked glass and the location of all ready-to-drink products behind locked fridge doors. These measures were regarded as reducing opportunities for impulse purchasing and misuse.
8. On the evidence before her, the Director was satisfied that the Respondent had discharged its onus under sections 36B(4) and 38(2) of the Act.
9. Conversely, the Director found that the objector (the Applicant) had not discharged its burden under section 73(10) of the Act.
10. On 29 February 2024, the Director approved the application and conditionally granted the liquor store licence (**Director's Decision**).

## REVIEW APPLICATION

11. On 29 March 2024, the Applicant lodged an application for review of the Director's Decision pursuant to section 25 of the Act. The Applicant's grounds for review are that the Director:
  - a) misconstrued its statutory function required under the Act;

- b) failed to give proper, genuine and reasonable consideration to the evidence filed by the Applicant as an objector;
- c) failed to adequately consider section 36B(4) of the Act;
- d) failed to assess and/or erred in its conclusion regarding the local packaged liquor requirements of the locality;
- e) failed to assess and/or erred in its conclusion regarding the existing packaged liquor premises in the locality;
- f) erred by misconstruing the proper construction of primary and secondary objects of the Act; and
- g) erred by misconstruing the proper construction of the “public interest”.

## SUBMISSIONS

### Submissions from the Applicant

12. The Applicant seeks a review under section 25 of the Act of the Director’s Decision to conditionally grant a liquor store licence to the Respondent for premises at Yanchep Central Shopping Centre.
13. The Applicant is the licensee of The Bottle-O Yanchep, a long-established packaged liquor store operating approximately 300 metres from the Proposed store.
14. The Commission is required to conduct a merits review and determine the application afresh on the material before the Director. In doing so, it must be satisfied that the requirements of section 36B(4) are met and that the grant of the licence is in the public interest under section 38(2), having regard to the objects of the Act in section 5.
15. The Applicant’s primary contention is that the Respondent has failed to discharge its onus under section 36B(4) of the Act. In particular, the Respondent has not established that there exists “local packaged liquor requirements” in the relevant locality that cannot reasonably be met by existing packaged liquor premises, namely BWS Yanchep and The Bottle-O Yanchep.
16. The Applicant relies on the Supreme Court’s decision in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2024] WASC 128 (**Liquorland Southern River**), which confirms that the assessment under section 36B(4) is a point-in-time analysis of current consumer requirements within the locality as at the date of the application, and not anticipated future requirements based on speculative population growth or future development.
17. The decision in *Liquorland Southern River* also confirms that section 36B(4) of the Act does not impose any minimum quantitative threshold for a “requirement”. However, the absence of a *de minimis* threshold does not relieve an applicant of the onus of establishing the existence, nature and content of any requirement relied upon, nor does it preclude refusal where any identified requirement is trivial or of little weight.

18. The Applicant submits that the relevant locality is confined to the presently settled parts of the suburb of Yanchep and does not include undeveloped bushland or areas earmarked for future development. The Respondent's reliance on the MGA planning evidence impermissibly conflates the concept of locality with a future trade or catchment area, contrary to established authority.
19. The Respondent contends that there are two principal consumer requirements within the locality: first, a requirement for purchasing competitively priced packaged liquor conveniently, including one-stop or one-trolley shopping; and second, a requirement for an additional packaged liquor store at the Yanchep Central Shopping Centre to facilitate competition and co-location with Coles.
20. The Applicant accepts that there is a general consumer requirement for convenience and competitively priced packaged liquor. However, that requirement is already reasonably and sensibly met by existing premises, including BWS Yanchep, which is co-located with Woolworths within the same shopping centre and offers one-stop and one-trolley shopping, and The Bottle-O Yanchep, which provides a large range of products and additional convenience services.
21. The asserted requirement for an additional packaged liquor store at the Centre is not supported by the evidence and is legally impermissible to the extent it focuses on the Centre rather than the locality as a whole. The Data Analysis Australia (DAA) survey does not establish any unmet requirement for a third liquor store in the locality.
22. On the contrary, the DAA report identifies the key consumer requirements in the locality as competitive pricing, parking and convenience, and concludes that these requirements are "relatively well met" by existing liquor stores. DAA's own analysis shows that more specialised features such as click-and-collect and loyalty programs were of low importance to consumers and, in any event, are already offered by existing premises.
23. To the extent the Respondent relies on survey responses indicating support for or intention to use a new store, the Applicant submits that such evidence is irrelevant to the section 36B(4) of the Act analysis. Expressions of support or hypothetical future usage do not establish the existence of a current demand or desire amounting to a "requirement" within the meaning of the Act.
24. Even if any consumer requirement beyond general convenience were established, the Applicant submits that it is reasonably met by existing packaged liquor premises in the locality. BWS Yanchep and The Bottle-O Yanchep together provide competitive pricing, proximity, accessibility, loyalty programs, online ordering and delivery services, and a breadth of product range that more than adequately meet local demand.
25. Accordingly, the Applicant contends that the Commission cannot be satisfied that local packaged liquor requirements cannot reasonably be met by existing premises, and the application must be refused under section 36B(4) of the Act.
26. In the alternative, the Applicant submits that the grant of the licence is not in the public interest under section 38(2) of the Act. The locality of Yanchep exhibits indicators of alcohol-related harm and disadvantage, including higher-than-average treatment rates for alcohol misuse, elevated assault statistics, socio-economic disadvantage, and the presence of groups recognised as being at higher risk of alcohol-related harm.

27. The Intervenor's evidence establishes that the addition of a further packaged liquor outlet in close proximity to existing stores, particularly one co-located with a supermarket where exposure to alcohol products is unavoidable, is likely to exacerbate alcohol-related harm and ill-health in the community.
28. The Director's Decision failed to meaningfully engage with this evidence and did not identify how the risks of harm or ill-health would be mitigated by licence conditions. The asserted public interest benefit of enhanced convenience is minor and does not outweigh the demonstrated risks.
29. When the likely increase in harm is weighed against the limited additional convenience offered by the Proposed store, the Applicant asserts that the balance of the public interest weighs decisively against the grant of the licence.
30. For these reasons, the Applicant submits that the Director's Decision should be quashed and substituted with a decision refusing the application for a liquor store licence.

### **Submissions from the Respondent**

31. These proceedings concern a section 25 review of the Director's Decision approving the conditional grant of a liquor store licence to Liquorland (Australia) Pty Ltd for a proposed 200m<sup>2</sup> liquor store adjacent to the Coles supermarket in Stage 2 of the Yanchep Central Shopping Centre. The Objector, Ameera Pty Ltd (the Applicant), bears the onus of establishing that its objection should be upheld and that the Director's Decision should be quashed.
32. The Respondent submits that the Director correctly determined that the Applicant failed to discharge its evidential burden and that the LL Application satisfies both the consumer requirements test in section 36B(4) and the public interest test in section 38(2) of the Act.
33. The LL Application was not controversial in its context. It relates to a moderately sized convenience liquor store in a newly expanded District Activity Centre, providing one-stop shopping adjacent to a full-scale Coles supermarket and close physical competition with an existing BWS store. These are features consistent with contemporary standards and expectations in large shopping centres.
34. The Respondent submits that convenience, including one-stop and one-trolley shopping, is a well-recognised consumer requirement and a notorious fact of contemporary Australian life. This Commission and the courts have repeatedly recognised that such convenience is a legitimate consideration under both section 5(1)(c) of the Act and the public interest test.
35. In assessing consumer requirements, the Commission is required to undertake inferential reasoning, considering the collective force of all the evidence rather than isolating individual facts. Properly conducted consumer surveys, consumer submissions, expert evidence and notorious facts all form part of that evaluative process.
36. The Respondent relies heavily on the DAA survey conducted in October 2022, which was statistically valid, representative and methodologically robust. The survey demonstrated strong consumer engagement with packaged liquor, widespread support for the Proposed store, and clear evidence that many consumers would use the Proposed store to meet their packaged liquor requirements.

37. The DAA survey showed that 77% of respondents had purchased packaged liquor in the preceding 12 months, 59% at least monthly, and that a majority identified competitive pricing, convenience and one-stop shopping as key requirements. A substantial proportion of respondents indicated that the Proposed store would assist them in meeting those requirements.
38. Importantly, while many consumers reported that existing liquor stores met their requirements to some extent, significant numbers indicated that their requirements were not fully met. The Respondent submits that, consistent with *Liquorland Southern River*, there is no *de minimis* threshold for unmet requirements and that even relatively modest unmet requirements may satisfy section 36B(4) of the Act.
39. The Respondent further relies on strong evidence of consumer support and intended usage of the Proposed store. The fact that 58% of all respondents supported the Proposed store, rising to 66% of liquor purchasers, and that an even higher proportion of liquor purchasers indicated they would use the Proposed store, supports an inference that existing outlets are not fully meeting consumer requirements.
40. In relation to locality, the Respondent submits that the relevant locality is the suburb of Yanchep. The Respondent contends that the differences between the locality posited by MGA and that advanced by the Applicant are immaterial, and nothing turns on them for the purposes of the section 36B(4) analysis.
41. Within the locality, there are two existing packaged liquor outlets: BWS Yanchep, located in Stage 1 of the Centre adjacent to Woolworths, and The Bottle-O Yanchep, located approximately 300 metres away across a major road. While those stores provide packaged liquor services, their location and configuration mean they do not reasonably meet all contemporary convenience and competition requirements of consumers shopping in Stage 2 of the Centre.
42. The Respondent submits that it is objectively unreasonable, by contemporary standards, to expect shoppers at the new Coles supermarket to cross the Centre's main street or a major road, potentially with a grocery trolley, in order to purchase packaged liquor. The Proposed store adjacent to Coles directly addresses this unmet convenience requirement.
43. The Respondent also submits that there is a legitimate consumer requirement for close physical competition between liquor stores within large shopping centres. A single BWS Yanchep store within the Centre cannot meet the requirement for in-store comparison shopping, competition-driven price and service benefits, and consumer choice that flows from having competing outlets in close proximity.
44. In addition, the Proposed store would provide products and services not currently available at the Centre, including exclusive product lines, integrated online ordering and click-and-collect with Coles groceries, and Flybuys rewards, which together contribute to meeting diverse consumer requirements.
45. Turning to the public interest, the Respondent submits that the grant of the licence promotes the object in section 5(1)(c) of the Act by catering for consumer requirements and supporting the proper development of the liquor industry. Planning policy objectives for District Activity Centres support clustering of retail services to enhance amenity, reduce vehicle trips and improve overall consumer experience.

46. While it is accepted that alcohol-related harm exists in the community generally, the Respondent submits that there is no cogent evidence that the grant of this particular licence will materially increase harm or ill-health. The Proposed store is of a conventional configuration, consistent with many existing supermarket-adjacent liquor stores across Western Australia.
47. The Respondent has volunteered, and the Director imposed, a suite of harm minimisation conditions. The Director correctly concluded that any risk of harm or ill-health could be appropriately managed through conditions, and that the Applicant (as objector) failed to demonstrate that the risk was of such a nature or magnitude as to warrant refusal.
48. The Respondent also notes that the Applicant itself operates a liquor store co-located with other retail and hospitality uses, undermining the contention that supermarket adjacency or exposure inherently gives rise to unacceptable harm.
49. In balancing the positive and negative factors, the Respondent contends that there is little real tension between the objects of the Act in this case. The evidence of consumer requirements, convenience, amenity and contemporary standards strongly favours the grant of the licence, while evidence of additional harm is speculative and unpersuasive.
50. Accordingly, the Respondent submits that the Director correctly found that the Applicant had not discharged its onus under section 73(10) of the Act, that the Respondent satisfied section 36B(4) and section 38(2) of the Act and that the Commission should affirm the Director's Decision, subject only to any minor condition variation the Commission considers appropriate.

### **Submissions from the Intervenor**

51. The Intervenor intervened in this Application for Review pursuant to section 69 of the Act in relation to the Director's Decision to conditionally grant a liquor store licence for premises to trade as Liquorland Yanchep.
52. The Proposed store is located within Stage 2 of the Yanchep Central Shopping Centre and immediately adjacent to a new Coles supermarket. The Proposed store design includes two points of entry, one of which is positioned along a corridor leading from the Coles checkout area to the supermarket exit.
53. The LL Application was advertised in accordance with the Act. The Applicant objected to the application under section 73, and the Intervenor intervened to make representations directed at harm minimisation pursuant to the Act.
54. The Intervenor does not seek to be heard on whether the Commission can be satisfied of the consumer requirements test in section 36B(4) of the Act. The Intervenor's submissions are confined to the question of licence conditions, specifically whether an additional harm-minimisation condition ought to be imposed.
55. The Director imposed a condition requiring the wall adjoining the Coles exit corridor to be non-transparent and free of alcohol branding and advertising. However, the Director declined to impose a further condition requiring removal of the liquor store entrance from the Coles exit corridor (**Proposed Condition 1**).

56. The Intervenor submits that the Director erred in declining to impose the Proposed Condition 1 and that the Commission should vary the Director's Decision to include it. The Proposed Condition 1 sought would remove the entrance from the supermarket exit corridor while retaining access to the store from the main shopping centre lobby.
57. The Intervenor asserts that on review, the Commission undertakes a rehearing on the merits and is empowered to affirm, vary or quash the Director's Decision, or to impose conditions that ought to have been imposed in the first instance.
58. As the licensing authority, the Commission has broad powers under section 64 of the Act to impose, vary or cancel licence conditions where such conditions are desirable in the public interest or necessary to meet the objectives of section 64(3), including minimising harm or ill-health caused by the use of liquor.
59. The public interest assessment must be undertaken having regard to the primary object in section 5(1)(b) of the Act, which is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. Where conflict arises between that object and other objects of the Act, a weighing and balancing exercise is required. The concept of "harm" under the Act is broad and extends beyond physical harm to include social, cultural and economic harm, including anti-social behaviour and impacts on families and communities.
60. The Intervenor submits that the locality of Yanchep already experiences alcohol-related harm and ill-health at levels that are not insignificant. Evidence before the Director shows that between 2019 and 2022 there were 300 treatment episodes involving Mental Health Commission-funded services within the locality. Of those treatment episodes, alcohol was identified as the primary drug of concern in 42% and as a drug of concern in 58%. These rates are higher than State averages and demonstrate the presence of alcohol-related harm in the community.
61. The locality also exhibits demographic characteristics associated with increased risk of alcohol-related harm. These include higher proportions of children and young people, family households, mining employment, unemployment, and relative socio-economic disadvantage compared with Perth and the State.
62. Crime statistics further support the existence of vulnerability, with family and non-family assault offences in Yanchep significantly higher than in comparable neighbouring suburbs. Research before the Director links unemployment and socio-economic disadvantage with increased risk of substance-related harm.
63. Children and young people are a recognised at-risk group under the Drug and Alcohol Interagency Framework. The locality contains multiple schools and childcare facilities, including a secondary school within 400 metres of the Proposed store. Evidence indicates that children and young people frequently congregate in the shopping centre, particularly given poor school attendance rates and limited alternative youth facilities in the locality.
64. The Proposed store configuration requires supermarket patrons exiting Coles to pass the liquor store entrance in close proximity and with a clear line of sight. This exposure is unavoidable for shoppers leaving the supermarket. The Intervenor submits that this configuration materially increases exposure of children and young people to alcohol cues, which research shows can influence attitudes toward alcohol, normalise consumption, and

increase the likelihood of early initiation and harmful drinking patterns. Children and adolescents are particularly vulnerable to alcohol advertising and environmental cues, as they lack the cognitive capacity to critically assess promotional messaging and implicit associations.

65. The association of liquor retailing with supermarkets increases the reach of alcohol exposure because supermarkets are visited frequently by a broad cross-section of the population for essential goods, including families and children. International and Australian research relied upon by the Intervenor demonstrates that close association between alcohol sales and supermarkets can lead to increased impulse purchasing, increased consumption, and greater alcohol-related harm. The Intervenor relies on expert evidence from Professor Pettigrew, which explains that visual and physical proximity between supermarket exits and liquor stores acts as a behavioural cue, increasing the likelihood of unplanned alcohol purchases. The requirement for supermarket customers to pass the Proposed store entrance to exit the Coles supermarket intensifies this effect, creating repeated and unavoidable exposure to alcohol availability.
66. The Commission has previously accepted similar evidence in *South Freo Fresh Pty Ltd v Director of Liquor Licensing & Ors* (LC 13/2020), where the risk of increased harm from one-stop shopping and impulse purchasing was found to be persuasive. The Intervenor submits that the Proposed store will increase the relative availability of alcohol in the locality and the likelihood of impulse purchasing, particularly absent the Proposed Condition 1 removing the supermarket exit entrance.
67. The fact that similar store configurations exist elsewhere does not establish that such configurations are safe or appropriate in this locality. Harm minimisation must be assessed on a site-specific basis, taking account of local demographics, patterns of use and existing harm. Anecdotal assertions that no harm has arisen at other similarly configured premises carry little probative weight when compared with expert public health evidence addressing the specific risks associated with this proposal.
68. The Intervenor contends that Proposed Condition 1 is proportionate and targeted. Removal of the supermarket exit entrance would not prevent access to the Proposed store, which remains readily accessible from the main shopping centre entry, and would involve minimal inconvenience to consumers.
69. When the existing level of harm, the vulnerability of at-risk groups, the unavoidable exposure created by the supermarket exit configuration, and the expert evidence on alcohol-related harm are weighed against the minor convenience benefit of the additional entrance, the Intervenor submits that the balance of the public interest favours imposing the Proposed Condition 1.
70. Accordingly, the Intervenor submits that if the Commission affirms the Director's Decision to grant the licence, it should vary that decision to impose Proposed Condition 1 in addition to the existing conditions, thereby better aligning the licence with the harm-minimisation objectives and intent of the Act.

## LEGAL AND STATUTORY FRAMEWORK

71. 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).
72. 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)).
73. 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)).
74. 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)).
75. The Commission is obliged to determine the LL Application by reference to the issues which arise from the LL 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)).
76. 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).

77. As explained in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (**Liquorland Karrinyup**) 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**).
78. Each criterion is explained below.

#### *Consumer Requirements condition*

79. 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.”*
80. Section 36B(4) was considered at length in *Liquorland Karrinyup*. 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* [74]).
81. 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 facts (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* [101]).
82. 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* [104], [131], [134]).
83. 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* [106], [108]).
84. 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* [181], [182], [188]).

85. 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* [185]).

#### *Public Interest condition*

86. 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.

87. 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.<sup>1</sup>

88. Further, the expression 'in the public interest', when used in a statute, imports a discretionary value judgment (*O'Sullivan v Farrer* [1989] HCA 61).

89. 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) of the Act:

- 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) of the Act:

- 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.

90. 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:

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

- 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)].
91. No 'other ... matter' has been prescribed pursuant to section 38(4)(d) of the Act.
92. The Public Interest condition requires the Commission to consider the positive and negative aspects of the LL Application and how the LL Application will promote the objects of the Act (*Liquorland Karrinyup* [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* [105]).
93. 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* [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* [33] citing *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227)).
94. There are two stages in determining whether the grant of an application is in the public interest.
95. 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 Ltd 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])).

96. Determining the public interest is a discretionary value judgment to be made having regard to the objects of the Act (*Liquorland* [34], [105]; *Woolworths Ltd 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

97. 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 and the Intervenor in this Application for Review.
98. The Applicant submits that the Commission is required to conduct a merits review and determine the application afresh on the material before the Director. In doing so, the Commission must be satisfied that the requirements of section 36B(4) are met ("**Consumer Requirements condition**") and that the grant of the licence is in the public interest under section 38(2), having regard to the objects of the Act in section 5 of the Act ("**Public Interest condition**").
99. The Commission accepts that submission.
100. The Commission addresses those 2 conditions as follows.

### Consumer Requirements condition

101. 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 package 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 services in the relevant locality.
  - d) The Commission then 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***

102. 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.
103. The concept of 'locality' was considered in both *Liquorland Karrinyup* and *Liquorland Southern River*.
104. The following propositions emerge from *Liquorland Karrinyup* and *Liquorland Southern River* 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 site;
  - 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.
105. In *Liquorland Southern River*, 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].
106. 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*' (Lemonis J, *Liquorland Southern River* [64]).
107. The Applicant in the Applicant's Responsive Submissions at [2] states that *Liquorland Southern River* confirmed the correctness of the Applicant's submissions set out in the Applicant's Primary Submissions at [40]-[43] about locality and in particular, that the Court confirmed at [162] that locality is to be assessed against the extant population at the time of the application, not against a future, anticipated population like MGA Town Planners did.

108. The Applicant in the Applicant's Responsive Submissions at [2] then submits that the Commission should accept the Applicant's conception of locality as shown in the Annexure to the Applicant's Primary Submissions.
109. The Respondent in the Respondent's Submissions in Reply at [7] states that MGA did not use 'trade area' to define the locality and nor is there any reason in principle why undeveloped land could not be within a locality, if that land otherwise meets the relevant closeness and neighbourhood criteria as explained by Archer J in *Liquorland Karrinyup*. The Respondent further then states that however, it does not appear that anything at all turns on the differences between the locality as posited by MGA and the locality posited by the Applicant in this case.
110. The Respondent submits that the locality in this case is, as identified by the Respondent's expert town planning consultant, the suburb of Yanchep.
111. The Commission has considered the following non-exhaustive factors in deciding the locality in this case:
- a) the geographical area surrounding the Proposed store;
  - b) the topographical features of the area, including natural and man-made barriers;
  - c) the geographical spread of the community; and
  - d) the submissions by the Applicant and the Respondent.
112. The Commission accepts the Respondent's submission that the locality in this case is, as identified by the Respondent's expert town planning consultant, the suburb of Yanchep.
113. The Commission finds that for the purposes of this case, the locality is the suburb of Yanchep (**Locality**).

***The requirements of consumers for packaged liquor in the locality***

114. Lemonis J held in *Liquorland Southern River* 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.
115. The Applicant at [64] and [65] of the Applicant's Primary Submissions submits that the onus is on the Respondent to establish the "requirements" within section 36B(4) of the Act that the Respondent contends exist.
116. The Commission accepts that submission.
117. The Respondent submits that the evidence establishes a wide range of local packaged liquor requirements for the services to be provided by the Proposed store and then specifically identifies those requirements at [57] of the Respondent's Primary Submissions and being the following:
- a) the consumer requirement for convenience. The Respondent submits that it should be inferred that many of the consumers who opt to shop at the new Coles supermarket in Stage 2 of the Centre will park in the new car park immediately adjacent to the Coles supermarket, and having to proceed from the Coles supermarket across Peony Avenue to the BWS Yanchep and then back again (either with or without a grocery trolley) would be relatively inconvenient and unreasonable having regard to contemporary standards and expectations for convenience and co-location of supermarkets and liquor stores. The same applies, but to an even greater extent, as regards The Bottle-O Yanchep. The Respondent asserts that between The Bottle-O Yanchep and Stages 1 and 2 of the Centre are the car parks and Marmion Avenue, which is a major road. The Respondent submits that there is uncontroverted evidence that The Bottle-O Yanchep is inconvenient for access as part of a supermarket shop at the Centre and would require an additional car movement;
  - b) the consumer requirement to be able to purchase packaged liquor at the Centre in a competitive setting and to enjoy the benefits (in terms of comparison shopping, facilities, services and prices) that flow from the close physical competition that is now a contemporary standard and expectation in large shopping centres such as this. That is because there is only one liquor store (the BWS Yanchep) currently located at the Centre. The BWS Yanchep store, on its own, self-evidently cannot meet the '*...obvious desire for consumers to conveniently shop around or compare prices in store;*' see this Commission's decision in *Liquorland Karrinyup* at [138]; and
  - c) the consumer requirement for products and services only available at the Proposed store, such as 400 exclusive products, combined online purchasing or click and collect in conjunction with groceries from Coles and ability to earn and redeem Flybuys points.

118. At [12] of the Applicant's Responsive Submissions, the Applicant contends that the Respondent has changed its position (compared to the position it put to the Director) as to what the consumer requirements of the Locality are. The Applicant states the Respondent now contends that there are three unmet consumer requirements within section 36B(4):

- a) A consumer requirement for convenience. This is described as "the consumer requirement for convenience and in particular the requirement to be able to one-stop/one trolley shop for groceries and liquor at the new Coles supermarket and adjacent Store" (underlining added).
- b) A consumer requirement "to be able to purchase packaged liquor at the Centre in a competitive setting and to enjoy the benefits (in terms of comparison shopping, facilities, services and prices) that flow from the close physical competition that is now a contemporary standard and expectation in large shopping centres such as this" (underlining added).
- c) A consumer requirement "for products and services only available at the Store, such as 400 exclusive products, combined online purchasing or click and collect in conjunction with groceries from Coles and ability to earn and redeem Flybuys points" (underlining added)

119. The Applicant considers the three contended requirements in turn at [15] to [25] of the Applicant's Responsive Submissions. The Commission sets out in summary the following:

- a) Convenience – the Applicant contends that a consumer requirement for convenience as framed by the Respondent could not have existed at the date of the application (February 2023) because the proposed Coles was then 10 months away; i.e., it was due for completion in December 2023. Nor could it have existed as at the date of DAA's survey evidence which was collected in October 2022, 14 months before the intended opening of the Coles. Thus, in so far as any such requirement may have been supported by the evidence that was before the Director (and is before this Commission), it is or was in the nature of a future, not a current requirement. The Applicant contends that such requirements are not the subject of section 36B(4) of the Act. The Applicant further contends that even if, contrary to the above submission, the contended requirement is capable of being construed as a permissible current requirement, it is not established by the evidence. The Applicant further contends that accordingly, the Respondent has not discharged its onus of establishing a consumer requirement for convenience in the terms put or in any other terms, and the Commission should so find.
- b) Competitive setting/competition – the Applicant contends that the Commission should not accept the existence of a requirement for competition in the terms set out by the Respondent because, by its clear and unambiguous terms, it is a requirement of the Centre, not of the Locality. The Applicant submits that this is contrary to the Court's findings in *Liquorland Southern River* at [57], [191]-[200]. Further and in any event, the survey responses as to requirements (set out on Index p.217) are general, and not about the Centre specifically (as was appropriate). Hence, there is no evidence to support the contended requirement as framed even if it were legally permissible, which it is not.

- c) Products and services only available at the store – The Applicant states that the Respondent cites the Nicholas Smith statement (Document 01E) at [14] and the DAA report (Document 01D) at [41], [44], [45], [48(f)] in support of this “requirement”. The Applicant states that Mr Smith merely states the number of liquor products exclusive to Coles Liquor. He does not provide any evidence about current consumer requirements in the Locality. Further, the Applicant contends that a demand for ‘options for click and collect’ and potential for loyalty cards is not evidence of what the Respondent has contended, namely a consumer requirement for products and services only available at the Store. The Applicant submits that the Respondent has not discharged its onus of establishing the existence of a consumer requirement “for products and services only available at the Store”, and the Commission should so find.
120. The Applicant however does state in the Applicant’s Primary Submissions at [65] that the Commission should find that there is a requirement for purchasing competitively priced packaged liquor conveniently (including one-stop / one-trolley shopping).
121. In response, the Respondent asserts that the Applicant accepts that the evidence establishes a consumer requirement for purchase of competitively priced packaged liquor conveniently (including one-stop shopping), but contends that there is no requirement for those services at the Centre; (Applicant’s Primary Submissions at [64]).
122. The Respondent however, asserts that all of the Respondent’s evidence was directed at establishing requirements for the services that would be provided by the new Proposed store at the Centre. The Respondent states that it relies upon the range of evidence summarised in the Respondent’s Primary Submissions at [20] to [27] as establishing (both for the purposes of section 38 and section 36B(4) of the Act) consumer requirements for the services that would be provided by the Proposed store, at the Centre.
123. The Commission accepts those submissions of the Respondent.
124. Having regard to the concepts espoused by Lemonis J in *Liquorland Southern River* (referred to in [114] above), the Commission finds that the local packaged liquor requirement for the purposes of section 36B(4) of the Act is the requirement for convenience and in particular being able to one-stop/one trolley shop for groceries and liquor at the Centre.

***The packaged liquor services already in the Locality***

125. This issue requires the Commission to assess what packaged liquor services are provided by the existing packaged liquor premises in the Locality.
126. The Commission must assess the packaged liquor services in the entire Locality.
127. The Applicant asserts that on both the Applicant’s and the Respondent’s version of the locality, there are two packaged liquor premises in the Locality.
128. Having found that the Locality is the suburb of Yanchep, the Commission then also finds that there are two packaged liquor premises in the Locality being the following:

- a) BWS Yanchep which (the Applicant asserts):
- i is located approximately 100 metres from the Proposed store with Woolworths being immediately to the right of BWS Yanchep;
  - ii has a floor area of approximately 200m<sup>2</sup> with an additional 50m<sup>2</sup> of walk-in cool room space;
  - iii has a total licensed area of 220m<sup>2</sup>;
  - iv is located adjacent to the Woolworths supermarket;
  - v is a one-stop/convenience liquor offering that, as conceded by the Respondent, “allows shoppers to visit before exiting the building to make single-trolley grocery and packaged liquor purchases”;
  - vi stocks a wide range of wine, beer, cider, spirits, and premix drinks; and
  - vii stocks a minimum of 1018 lines of liquor varieties.
- b) The Bottle-O Yanchep which (the Applicant asserts):
- i is located about 100 metres from the Centre on the other side of Marmion Avenue, and about a 4-minute walk from BWS Yanchep and a 5-minute walk from the Proposed store;
  - ii has a total licensed area of 350m<sup>2</sup>, consisting of a floor area of approximately 300m<sup>2</sup> of browsing space and another 50m<sup>2</sup> of walk-in cool room;
  - iii sits under the IBA banner group which runs a Western Australian state-based fortnightly promotional program;
  - iv participates in a national online ordering system for click and collect or home delivery;
  - v runs its own website with local home delivery available separate to the national offering with deliveries within the hour;
  - vi has a basic essentials convenience store and comprehensive café that serves fresh homemade food and coffee;
  - vii has 28 dedicated parking bays;
  - viii is less than 50 metres from a chemist, doctors’ surgery and real estate agency; and
  - ix stocks a total of 3149 lines of liquor varieties, consisting of 1552 types of wine, 354 types of beer, 907 types of spirits, 52 types of cider and 284 types of RTDs.

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

129. 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.
130. 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.
131. *Lemonis J in Liquorland Southern River* provides guidance to the Commission on a number of relevant and applicable issues including the following:
- a) Firstly, that section 36B(4) of the Act requires that there be a demand/supply type analysis, with the result that the LL Application must not be granted unless the demand cannot reasonably be met by the supply;
  - b) Secondly, that one such comparison is made by reference to one locality; and
  - c) Thirdly, that the text of the legislation suggests that the required assessment is a 'point in time' analysis as was submitted by the Director of Liquor Licensing in *Liquorland Southern River* at [154].
132. The Commission notes that the Director of Liquor Licensing in *Liquorland Southern River* submitted that the objects of the Act do not control the meaning of section 36B(4) of the Act; rather the text, purpose and context controls the meaning. The Director of Liquor Licensing in *Liquorland Southern River* said the required comparison is a 'point in time' assessment undertaken at the time the application is heard and therefore does not take account of likely population growth.
133. *Lemonis J* stated that *'the Director of Liquor Licensing submitted that to interpret the provisions as requiring a point in time assessment gives effect to the additional hurdle that s 36B(4) imposes, namely that an additional licence will only be granted where it is assessed that the local packaged liquor requirements, as found, cannot reasonably be met by existing premises'*.
134. At [158] *Lemonis J* said that: *'The definition of local packaged liquor requirements speaks of 'the requirements of consumers for packaged liquor in the [relevant] locality. This language reflects an assessment of the extant position at the time the application is heard and does not readily accommodate the concept of future population growth. The language speaks of 'the requirements of consumers', not the requirements of existing and possible future consumers.'*
135. The comparative assessment referred to in [132] above is a point in time analysis of the extant position at the time the application is heard.

**Requirement for purchasing competitively priced packaged liquor conveniently (including one-stop/trolley shopping)**

136. The Applicant in the Applicant's Primary Submissions states that the existing packaged liquor premises (being BWS Yanchep and The Bottle-O Yanchep) in the Locality easily satisfies this requirement. In particular, the Applicant submits that there is no suggestion that the products in either BWS Yanchep or The Bottle-O Yanchep are not competitively priced or that either store is inconvenient in any way.
137. In respect to BWS Yanchep, the Respondent asserts that the BWS Yanchep store in the Stage 1 part of the Centre offers an opportunity for one-stop shopping for groceries and liquor, however the population of Yanchep has increased substantially over the recent years and Stage 2 of the Centre has now been completed. The Respondent then asserts that those matters may explain why some consumers consider that some of their requirements are not met by the existing stores.
138. In respect to The Bottle-O Yanchep, the Respondent asserts that The Bottle-O Yanchep store is 300 metres from the BWS Yanchep store and importantly is on the other side of a major road (Marmion Avenue) in what MGA describes as 'a local activity centre'. The Respondent concedes that The Bottle-O Yanchep provides a good range of packaged liquor but its location means that it is not a convenient or realistic one-stop shopping option for persons shopping at the Centre and for the same reason it does not offer consumers a convenient opportunity for physical comparison shopping.
139. The Respondent in the Respondent's Primary Submissions, states that the question is whether viewed objectively, relevant local packaged liquor requirements can reasonably (i.e., sensibly, rationally or moderately, and without being absurd, ridiculous or extravagant, or excessive) be met having regard to contemporary standards and expectations for provision of packaged liquor.
140. The Respondent asserts that the DAA survey is evidence of consumer requirements but that evidence is not determinative, because ultimately it is for the Commission to assess whether, viewed objectively, the consumer requirements can reasonably (i.e., sensibly, rationally or moderately, and without being absurd, ridiculous or extravagant, or excessive) be met having regard to contemporary standards and expectations.
141. As regards contemporary standards and expectations, the Respondent submits there is no doubt that there is a contemporary standard and expectation that one-stop shopping for groceries and liquor be available. The Respondent further submits that this has been acknowledged as a notorious fact by the Court of Appeal in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 at [78].
142. The Respondent further submits that having regard to those contemporary standards and expectations, and the evidence as a whole, the Commission should infer (for the following reasons and in the following respects), that there are consumer requirements in Yanchep (that is the Locality) which cannot reasonably be met (i.e., in a way that is sensible, rational or moderate and not absurd or ridiculous or extravagant, or excessive) by the existing premises:

- a) the consumer requirement for convenience. It should be inferred that many of the consumers who opt to shop at the new Coles supermarket in Stage 2 of the Centre will park in the new car park immediately adjacent to the Coles supermarket, and having to proceed from the Coles supermarket across Peony Avenue to the BWS Yanchep and then back again (either with or without a grocery trolley) would be relatively inconvenient and unreasonable having regard to contemporary standards and expectations for convenience and co-location of supermarkets and liquor stores. The same applies, but to an even greater extent, as regards The Bottle-O Yanchep. The Respondent contends that between The Bottle-O Yanchep and Stages 1 and 2 of the Centre are the car parks and Marmion Avenue, which is a major road. There is uncontroverted evidence that The Bottle-O Yanchep is inconvenient for access as part of a supermarket shop at the Centre and would require an additional car movement; and
  - b) the consumer requirement to be able to purchase packaged liquor at the Centre in a competitive setting and to enjoy the benefits (in terms of comparison shopping, facilities, services and prices) that flow from the close physical competition that is now a contemporary standard and expectation in large shopping centres such as this. That is because there is only one liquor store (the BWS Yanchep) currently located at the Centre. The BWS Yanchep store, on its own, self-evidently cannot meet the ‘...*obvious desire for consumers to conveniently shop around or compare prices in store;*’ see this Commission’s decision in *Liquorland Karrinyup* at [138].
143. The Respondent states that the drawing of these inferences is strongly supported by the fact that 58% of all survey respondents (and 66% of respondents who were purchasers of packaged liquor) supported the application, increasing to 94% for those purchasers of packaged liquor who would shop at the Coles supermarket at least fortnightly. Even for those liquor consumers who said they would never use the Proposed store, support was at 50% notwithstanding the presence of the BWS Yanchep and The Bottle-O Yanchep in the Locality.
144. Equally striking and perhaps most significant says the Respondent, is the fact that while 66% of liquor consumers *supported* the LL Application, an even greater proportion of liquor consumers (73%) said they would *use* the Proposed store. The obvious and compelling inference which this Commission should draw is that support for, and usage of, the Proposed store would not be as strong as this if consumer requirements were in fact being sufficiently met by existing stores.
145. The Respondent acknowledges that other survey results are not as strongly supportive of the inferences for which the Respondent contends. For example, consumers gave varying responses to question 6(c) (reported in the DAA survey at [42] to [46] and in table 19) as to the extent to which existing stores met their various requirements. However, the Respondent further submits that:
- a) for each of the requirements asked about, a significant percentage of consumers reported that their requirements were not fully met, and as noted above, it is clear from *Liquorland Southern River* that section 36B(4) of the Act does not require some minimum level of unmet requirements to be established; and
  - b) as noted by DAA at [42], [46] and [53], question 6(c) related to the then *current* shopping behaviours and attitudes of consumers in circumstances where Stage 2 of the Centre

had not been completed, did not address whether consumers would regard their requirements (for example, as to convenience) as being met to the same extent once Stage 2 of the Centre was complete and some of them would then be shopping at the Coles supermarket, and should be considered having regard to subsequent questions in the survey (which evidenced strong support for, and usage of, the Proposed store).

146. The Respondent 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.
147. 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 Respondent, 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 within the Locality.
148. As stated by the Respondent, 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. Importantly, '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.
149. Finally the Respondent submits that approaching the evidence in the manner described in the Respondent's Primary Submissions based on the combination of evidence of very strong consumer support for, and use of, the Proposed store, the evidence that (even before the completion of Stage 2 and the opening of the Coles supermarket) various consumer requirements were not being completely met by existing premises, and the evidence of contemporary standards and expectations, the Director correctly decided that the Applicant (Objector) had not discharged its onus under section 73(10) of the Act, and that the Respondent had discharged its onus of proof in relation to section 36B(4). This Commission should affirm the Decision of the Director.
150. The Intervenor did not seek to be heard on whether the Commission can or cannot be satisfied of the matters set out in section 36B(4) of the Act.
151. The Commission finds that the Respondent has satisfied the Consumer Requirements condition as set out in section 36B(4) of the Act.

### **Public Interest Condition**

152. Public Interest" is not defined in the Act.
153. 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.

154. 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 Ltd v Director of Liquor Licensing* (2013) 45 WAR 446 [48]).
155. The Commission must consider the primary and secondary objects of the Act.
156. 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.
157. Each primary object is considered equal and in the event of any inconsistency between the primary and secondary objects, the primary objects take precedence.
158. 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.
159. 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.
160. In weighing these considerations, tension may arise between the object of minimising harm or ill-health and other objects of the Act.
161. The Applicant in the Applicant's Primary Submissions, states that the onus is on the Respondent to establish that the grant of the licence is in the public interest within section 38(2) of the Act. In a practical sense, this requires it to respond to and counter any positive evidence of "negative" public interest factors, such as risks of harm or ill-health caused to people, or any group of people, due to the use of liquor arising from the grant of the application (sections 5(1)(b) and 38(4)(a) of the Act).
162. The Intervenor did not seek to be heard on whether the Commission can or cannot be satisfied of the matters set out in section 36B(4) of the Act. However, the Intervenor did wish to be heard in respect to the Public Interest condition and especially in respect to Proposed Condition 1.
163. The Intervenor states in the Intervenor's Submissions, that the Intervenor's Submissions address the question of whether Proposed Condition 1 should be imposed and submits that it is desirable, and in the public interest, to place Proposed Condition 1 on the Licence.
164. The Commission notes that the Respondent, in the Respondent's Supplementary Submissions, states that while the Respondent maintains its position as set out in [22] to [28] of the Respondent's Reply Submissions, if the Commission affirms the Director's Decision then the Respondent does not oppose a variation of the Director's Decision so as to include 'Proposed Condition 1', namely the removal of the entrance into the Proposed Store from the Coles exit corridor with such works to be completed within 90 days of the affirmation of the Director's Decision.
165. On that basis there appears to be no necessity for the Commission to deal in detail with the Intervenor's Submissions in respect to the Public Interest condition.

*Public interest – consumer requirements and convenience*

166. The Respondent in the Respondent's Primary Submissions:
- a) submits that one of the primary objects of the Act is to cater for the requirements of consumers for liquor and related services: section 5(1)(c). As a consequence, the Respondent says it is usually necessary and appropriate for an applicant to adduce evidence, in the public interest context, as to the requirements of consumers for liquor and related services. The Respondent submits that where there is clear evidence of consumer demand in support of an application and no negative aspects, the only conclusion which is open is that the grant of the application is in the public interest (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 at [7],[8]);
  - b) submits that convenience is a relevant consumer requirement. It is a notorious fact of contemporary Australian life that the convenience of one-stop shopping is of great

importance (especially to working people). This is reflected in the development of shopping centres, and the Commission is entitled to take this into account in determining whether the grant of the Licence is in the public interest (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 at [78]);

- c) submits that the Commission has also recognised that one-stop shopping convenience, marked by the ability to easily visit multiple shops in close proximity without the need to make a second trip in a vehicle and using a single trolley, is a relevant public interest consideration (*BWS Kelmscott* [LC 32/2022 at [38]]);
- d) states that the Court in *Liquorland Southern River* held that there is no *de minimis* threshold for a consumer requirement for the purposes of section 36(B)(4) of the Act, but said that 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 (Lemonis J at [132]-[136]) and submits that what amounts to a sufficient consumer requirement for the purposes of sections 33 and 38 of the Act will no doubt vary from case to case, but there is no requirement for applicants to show that a large section of the public has the relevant requirement;
- e) states that the task of assessing consumer requirements is one that invites inferential reasoning, and:
  - i when using inferential reasoning, facts are not to be considered on a standalone or piecemeal basis, but rather, their collective force is to be considered;
  - ii in deciding whether an inference is made out, all of the circumstances are to be considered and weighed, including any notorious facts;
- f) states that consumer requirements are not to be considered in isolation; and
- g) states that the overall public interest must be evidence based and submits that the best evidence comes from consumers themselves and if there is (as there is here, as submitted by the Respondent) cogent, reliable evidence of consumer requirements (such as properly conducted surveys and consumer submissions) substantial weight should be attributed to that evidence.

167. The Commission accepts the submissions by the Respondent as set out in [166] above.

#### *Public interest – enhanced amenity*

168. The Respondent in the Respondent's Primary Submissions relies on the express objectives of *State Planning Policy 4.2 (Activity Centres)* under the *Planning and Development Act 2005* which are to concentrate activities within activity centres that are accessible and well served by a range of transport options, with a priority on walking, cycling and public transport use. Further, says the Respondent, the clustering of retail activities creates efficiencies and other benefits for consumers, including competition, reduced vehicle use and traffic congestion and related adverse environmental effects. The Respondent submits these all relate to amenity because they go to the overall character, quality and enjoyment of life within a locality.

169. The Respondent in the Respondent's Primary Submissions provides a factual context for assessment of public interest as follows:

- a) the Centre where the Proposed store is located is in Yanchep, which is an outer suburb of the City of Wanneroo. The Centre comprises Stages 1 and 2. Stage 1 is located to the north of Peony Avenue. It contains a Woolworths supermarket (with the adjoining BWS Yanchep store) along with a pharmacy, bakery, newsagency, specialty retailers, health and beauty services and fast food outlets;
- b) Stages 1 and 2 of the Centre effectively comprise the Yanchep town centre, with Peony Boulevard dividing Stages 1 and 2, and which functions as the main street;
- c) the Centre is the only supermarket based activity centre in Yanchep meeting the daily and weekly shopping needs of residents. Estimated annual foot traffic is about 1.5 million customers; and
- d) the Proposed store is a convenience style store adjacent to the new Coles supermarket in Stage 2 of the Centre, and has a floor area of approximately 200 square metres.

170. For the reasons stated in [14] of the Respondent's Primary Submissions, the Respondent submits responses to particular survey questions are not to be considered on a standalone or piecemeal basis; it is their collective force that should be considered.

171. The Respondent states that taking that approach to the DAA survey, the Respondent submits it is clear that there are significant consumer requirements for the services that would be provided by the Store.

*Public interest – planning objectives and amenity*

172. The Respondent in the Respondent's Primary Submissions submits that planning provisions and objectives go primarily to amenity. The Proposed store would be consistent with relevant planning objectives and would hence be likely to enhance amenity in the Locality. That is, the Centre is a District Activity Centre which should provide for daily and weekly household shopping needs, other retail services and some specialty shops, and the Proposed store does exactly that.

173. The Respondent 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.

174. 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 LL Application.

*Development of the Liquor Industry, Tourism Industry and Entertainment Industry*

175. The Respondent argues that the LL 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.

176. The Respondent does not make any additional arguments as to the contribution of the LL Application to the Tourism or Entertainment Industry.

177. The Commission does not consider that there are any compelling reasons that the LL Application would not be consistent with the proper development of the liquor and related industries.

*Offence, annoyance, disturbance or inconvenience*

178. The Respondent submits that the Proposed store is a medium sized convenience store, within a shopping centre.

179. The Commission is satisfied on the basis of the evidence provided that the grant of the LL 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*

180. The Respondent in the Respondent's Primary Submissions states that the second ground of objection by the Applicant in this Application for Review is that the LL Application *would cause 'undue harm or ill health to people, or any group of people due to the use of liquor'*. The Respondent submits that the evidence does not support this and in any event, submits the Respondent, a liquor licence application should not be refused simply because there might be some risk of alcohol-related harm or ill-health.

181. The Respondent further asserts that the primary object of the Act of minimising alcohol-related harm or ill-health is not a synonym for prohibition or limiting supply of liquor or that every application for a new licence should be refused; it contemplates the regulation of supply of liquor to ensure a net public benefit. Nor does it contemplate the absolute prevention of harm.

182. Accordingly, the Respondent submits that the object of 'regulating' sale, supply and consumption of liquor contemplates only that the supply of liquor should be regulated through the processes set out in the Act for applications, imposition of conditions and disciplinary measures, with a view to ensuring a net public benefit.

183. The Commission accepts the Respondent's submissions.

184. The Commission notes as stated by the Respondent in the Respondent's Primary Submissions, that the Applicant did not advance any evidence or even an argument to the Director as to how or why the grant of the LL Application might lead to an increased risk of alcohol-related harm or ill-health for any particular group or the community generally.

185. In *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 (**Carnegies**) Allanson J held that the proper way to assess the level of harm caused by the grant of an application is to:

- a) make findings that specifically identify the existing level of alcohol-related harm and ill-health in the Locality due to the use of liquor;
- b) make findings about the likely degree of harm or ill-health to result from the grant of the LL Application;

- c) assess the likely degree of harm to result from the grant of the LL 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 LL Application is in the public interest.
186. The Intervenor in its Primary Submissions at [29] states that while *Carnegies* concerned the grant of an extended trading permit (and as such the test cannot be directly applied to this case), the Intervenor submits that the test should be applied by analogy in this case. The Commission accepts that submission.
187. The Intervenor submits at [30] that there is no need to establish, on the balance of probabilities, that harm or ill-health will be caused by granting a licence. The question is whether the grant of the LL Application is reasonably likely to result in harm to people, or any group of people. Accordingly, the Commission may have regard to the potential for harm or ill-health when assessing the public interest.

#### *Carnegies test –Level of Harm and Ill-health*

188. The Intervenor produced evidence which established that between 2019 and 2022, there were 300 'treatment episodes' with agencies receiving Mental Health Commission funding within the Locality. A treatment episode refers to an individual receiving one or more sessions of treatment and remains open as long as they need treatment. Accordingly, multiple treatment episodes could concern the same person. Of the 300 treatment episodes, alcohol was identified as the primary drug of concern in 126 (or 42%) of the treatment episodes and a drug of concern in 175 (or 58%) of treatment episodes.
189. The Intervenor asserts that any criticism of that data by the Respondent is misplaced for the reasons set out in the Intervention (Document 16, CHO's closing submissions dated 14 June 2023, 856-857 [1.1.1]). The Intervenor asserts that it remains the case that Yanchep residents experience a higher rate and percentage of treatment episodes where alcohol is the primary drug of concern when compared to the State. Of relevance to this particular at-risk group is the association between Liquorland and Coles supermarket – with the additional entrance providing a trigger point of exposure for those wishing to meet their daily food and other household needs at Coles.
190. The Intervenor states that further, focusing on a comparison with the rest of the State is apt to distract from the significance of the data. The Intervenor submits that evidence clearly shows that there are already alcohol-related harms in Yanchep. The Intervenor's position is that additional alcohol-related harms can be minimised through the imposition of appropriate conditions.
191. The Intervenor submits that it is open to the Commission to find that the Locality's existing level of alcohol-related harm and ill-health is not insignificant having regard to the data and research presented by the parties and the Commission's reasoning in previous proceedings before it as to the risks of alcohol exposure, impulse purchasing and relative availability flowing from the sale of liquor from stores associated with supermarkets.
192. Having regard to the data and the research presented by the parties, the Commission finds that the Locality's existing level of alcohol-related harm and ill-health is not insignificant.

*Carnegies test - Likely degree of harm and ill-health which may be caused as a result of the grant of the LL Application*

193. In the Liquorland Bodhi Report it was noted that the Locality is also a growing suburb and has a significantly higher percentage of couple families with children compared to Perth.
194. The Commission acknowledges that children and young people are an at-risk group and it is noted that the proportion of children in the Locality is significantly higher than Perth. In particular, there are 4 schools and 10 childcare facilities in the Locality, including Yanchep Secondary School, which is less than 400 metres from the Proposed store. As such, the Intervenor submits that it is reasonable to assume that large numbers of parents and children will frequent the Coles supermarket due to convenience.
195. The Intervenor states that in the Liquorland Bodhi Report it was noted that:
- 'There is poor attendance at schools [in the Locality] with only 30% of children attending more than 90% of the time. Educational outcomes are below average. Youth do not have facilities such as skateparks and programs of interest to them and many are hanging out in the shopping centre and at McDonalds.'* (Emphasis added)
196. The Intervenor asserts that the above statement suggests that the combined effect of poor attendance by school children in the Locality and the lack of youth facilities is that more children will likely frequent the Centre (and therefore be exposed to the Proposed store) than would otherwise be the case if their attendance was satisfactory.
197. The Intervenor therefore submits that if the Commission affirms the Director's Decision without imposing Proposed Condition 1, more children will be exposed to a risk of alcohol-related harm.
198. The Intervenor notes the Respondent's commitment to only displaying educational signage promoting 'Liquorland's' harm minimisation policies targeting juveniles on the wall adjacent to the Coles supermarket and submits that this is an acknowledgment by the Respondent that there is a real possibility that children and young people in the Locality will be exposed to harm as a result of the Proposed store.
199. The Intervenor further submits at [57] of its Primary Submissions that the Proposed store will increase the risks of alcohol exposure and impulse purchasing.
200. The Applicant states at [81] of the Applicant's Primary Submissions that it is difficult to predict the degree of harm likely to result from the grant of the LL Application against the existing degree of harm. The Applicant further states that the Intervenor's evidence especially is sufficient for the Commission to find on the balance of probabilities that:
- a) the existing degree of alcohol-related harm and ill-health in the community is not insignificant; and
  - b) the addition of a third packaged liquor outlet in the Locality, especially one co-located with a supermarket where shoppers cannot avoid the entrance to the liquor store, is likely to materially add to the harm. The Applicant submits that it is illogical that it would not.

201. The Applicant also asserts that the Respondent's proposed harm mitigation measures are insufficient to fully address the risk of increased harm.
202. The Respondent states at [31] of the Respondent's Primary Submissions that the Bodhi Alliance report reviewed the risk minimisation measures to be taken by the Respondent, and concluded that those measures would assist in mitigating potential risk.
203. It is further submitted by the Respondent at [32] of the Respondent's Primary Submissions that the Director, in the Director's Decision, referred to the harm minimisation measures that the Respondent had agreed to take, said that there was nothing new or novel in the configuration of the Proposed store, and concluded that any risk of harm or ill-health arising from the grant of the Licence could be dealt with by way of conditions. Paragraphs 2 to 5 of the Trading Conditions imposed on the Licence are directed at minimising harm and ill-health risks.
204. The Commission acknowledges that children are vulnerable to the influence of the external environment (physical and social) which can impact on drinking attitudes, behaviours, and related harms.
205. The Intervenor submits that should the LL Application be granted there would be an increased risk of alcohol exposure (especially for children), impulse purchasing and relative availability flowing from selling liquor in the same location as the Coles store, which would increase consumption.
206. The issue is whether the availability of alcohol products at the Proposed store will result in an unacceptable increase in harm and ill-health to those within the at-risk category in the Locality.
207. The Submission of the Intervenor is if alcohol is made available for sale at the Proposed store near the Coles site then there is a resulting increase in harm and ill-health as at risk persons are highly vulnerable and susceptible to alcohol-related harm.
208. In respect to the harm occurring on or immediately around the Proposed store, the Commission finds that it is unlikely that there will be a significant increase in harm and ill-health. Particularly given the location of the Proposed store (within the Centre) and the relatively medium size of the Proposed store.
209. However, the Commission acknowledges that 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 or may not occur.
210. Ultimately the Commission is satisfied that the granting of the LL Application would likely result in an increase in the harm and ill-health due to the fact alcohol will be available for sale near Coles.

*Carnegies test – Assessment and weighing of degrees of harm*

211. Whilst it is acknowledged that harm and ill-health exists within the Locality and that there is a possible degree of harm that may occur due to the granting of the LL Application, the Commission considers that in the context:

- a) the Proposed store is of a medium size;
- b) the Respondent is an experienced and responsible operator of retail outlets and licensed premises;
- c) the Proposed store is within the Shopping Centre; and
- d) the Commission imposes the Proposed Condition 1 on the Proposed store as a further Trading Condition to those imposed by the Director in the Director's Decision,

then, although the likelihood of harm and ill-health increasing exists, it would not be to a level as to make it inappropriate to grant the LL Application. It should also be noted that the primary object of the Act is to minimise harm or ill-health, not eradicate it.

212. The Commission finds that the Trading Conditions imposed by the Director in the Director's Decision together with the Proposed Condition 1, are appropriate risk minimisation conditions.

#### *Carnegies test – Weighing*

213. In weighing the likelihood of alcohol-related harm and ill-health against the benefits of the LL Application (as considered above) the Commission finds that such likelihood is not so unacceptable that it outweighs the benefits of the granting the LL Application.

#### *Objections*

214. On balance the Commission finds that none of the grounds of objection have been made out by the Applicant and as such the burden of establishing the validity of the objections has not been discharged in accordance with the requirement of section 73(10) of the Act.
215. Having regard to the totality of the evidence, the submissions of the parties and the application of the relevant legislative provisions, the Commission is satisfied that the LL Application is in the public interest.

#### **Public Interest condition conclusion**

216. Having regard to the relevant principles, materials filed in this Application for Review and the concessions as to proposed harm minimisation conditions, the Commission is satisfied that:
- a) the grant of the LL Application would be in the public interest; and
  - b) the conditions being imposed on the Licence are appropriate to minimise harm.

#### **CONCLUSIONS**

217. 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.

218. Accordingly,

- a) the Decision of the Director of Liquor Licensing is affirmed with the addition of the following further Trading Condition 6 included in the Schedule of Trading Conditions on the Licence:

6. *The removal of the entrance into the Proposed Store from the Coles exit corridor with such works to be completed within 90 days of the Liquor Commission's Decision.*

- b) this Application for Review is dismissed.

## **ORDERS**

219. The Director's Decision is affirmed with the addition of a further Trading Condition 6 which states: *The removal of the entrance into the Proposed Store from the Coles exit corridor with such works to be completed within 90 days of the Liquor Commission's Decision.*

220. The Application for a Liquor Store Licence is granted.

221. The Application for Review is dismissed.



**JARED BROTHERSTON**  
**PRESIDING MEMBER**



**MARY BROWN**  
**MEMBER**



**TONY DI FRANCESCO**  
**MEMBER**