

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ENDEAVOUR GROUP LIMITED

OTHER PARTIES: CHRISTOPHER TALLENTIRE MLA (OBJECTOR)
DOMENIC CAMPANELLA (OBJECTOR)
BRUINN PTY LTD (OBJECTOR)
CHIEF HEALTH OFFICER (INTERVENOR)
COMMISSIONER OF POLICE (INTERVENOR)

PREMISES: BWS - BEER WINE SPIRITS THORNLIE

PREMISES ADDRESS: THORNLIE SQUARE SHOPPING CENTRE, 318 SPENCER ROAD, THORNLIE

APPLICATION ID: A688963697

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF REASONS: 07 JANUARY 2021

Introduction

- 1 On 26 October 2020, I issued a notice pursuant to s 18AA of the *Liquor Control Act 1988* (the Act) advising the parties that after consideration of the evidence and submissions presented in the application, I had determined that the applicant had failed to discharge its onus under s 36B(4) of the Act and therefore the application was refused.
- 2 Pursuant to s 18AA(3), Endeavour Group Limited (the applicant) has requested written reasons for my decision. These are those reasons.

Background

- 3 The applicant lodged an application for the conditional grant of a liquor store licence for premises to be located in the Thornlie Square Shopping Centre, 318 Spencer Road, Thornlie and to be known as BWS Beer Wine Spirits Thornlie.
- 4 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Objections to the grant of the application were lodged by Mr Christopher Tallentire MLA, Domenic Campanella and Bruinn Pty Ltd (licensee of the Thornlie Tavern). The Chief Health Officer and the Commissioner of Police both lodged notices of intervention in the application.
- 5 The application was determined on the written submissions of the parties, as permitted under ss 13 and 16 of the Act. In addition, these written reasons have been prepared and should be read in the context of a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.¹

Brief overview of the application

- 6 According to the applicant, BWS stores are liquor stores which provide convenience to customers and part of the popularity of BWS is the location of the stores in neighbourhood shopping centres either as stand-alone stores or adjacent to Woolworths supermarkets.
- 7 The proposed liquor store will be approximately 188m² in size and be typical of the BWS format. The proposed liquor store will adjoin the entry to the Woolworths supermarket and provide the opportunity for single-trolley grocery and liquor purchases. It was submitted that BWS offers a comprehensive range of liquor products, including local and international beer, wine and spirits and the range is focused on popular brands and includes brands sold exclusively through Endeavour's liquor stores. The proposed trading hours of the store are:
- Monday to Friday 8am to 9pm
 - Saturday 8am to 5pm
 - Sunday 11am to 5pm
- 8 In support of the application, the applicant lodged a Public Interest Assessment (PIA), which included:
- a report by MGA Town Planners (MGA report); and
 - a community survey undertaken by Painted Dog Research (community survey).

Determination

- 9 The application was refused because, in my view, the applicant failed to discharge its onus under s 36B(4) of the Act. Therefore, the starting point is to consider the statutory framework and history of this section, Parliament's intent and, what in my view, is the proper construction of the section.

History of s 36B, statutory framework of the section and Parliament's intent

- 10 Section 38 of the Act was repealed in 2007 and new provisions were inserted. The new provisions introduced the public interest test² and provided that an applicant who makes an application to which the section applies must satisfy the licensing authority that the grant of the application is in the public interest. The public interest test replaced what was colloquially referred to as the "needs test" contained in the repealed provisions of s 38. The old "needs test" included a restraint on the granting of liquor store licences.³
- 11 It was envisaged that the introduction of the public interest test in the 2007 amendments to s 38 of the Act would provide a mechanism to control the proliferation of packaged liquor outlets and outlet density⁴, however this did not eventuate. Consequently, the introduction of s 36B into the Act was Parliament's response to decisions of the licensing

¹ S 16(7) of the Act.

² See s 38(2)

³ Section 38(2b) of the repealed provisions.

⁴ refer *Parliamentary Debates, WA Parliament, vol 409, p 6342*

authority and the Supreme Court relating to the grant of new packaged liquor licences. The Government has sought to create a direct restraint on the grant of new liquor licences authoring the sale of packaged liquor and to achieve this policy objective, s 36B was inserted into the Act.

- 12 Section 36B(4) of the Act states:

“The licensing authority must not grant an application to which this section applies unless satisfied that local packaged liquor requirements cannot be reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated.”

- 13 “Local packaged liquor requirements” is defined in s 36B(1) to mean *the requirements of consumers for packaged liquor in the locality in which the proposed licensed premises are, or are to be, situated*. By virtue of s 36B(2), subsection (4) applies to an application for:

- (a) a hotel licence without restrictions;
- (b) a tavern licence;
- (c) a liquor store licence;
- (d) a special facility licence of a prescribed type.

- 14 Section 36B was inserted into the Act by s 18 of the *Liquor Control Amendment Act 2018* (WA). The related Explanatory Memorandum for the Bill relevantly provides:

*As a strategy to minimise the adverse impact that packaged liquor outlets can have on the community, the Bill inserts new section 36B **to enable the licensing authority to manage the number of packaged liquor outlets where sufficient outlets already exist within a locality**. This will be complemented by additional amendments relating to large packaged liquor outlets being established in close proximity to an existing large packaged liquor outlet. (emphasis added.)*

- 15 In the Second Reading Speech, the Minister for Racing and Gaming said:⁵

*... to prevent the further **proliferation of small and medium** packaged liquor outlets across the state, the act will be amended so that the licensing authority must not grant an application unless it is satisfied that existing premises in the locality cannot reasonably meet the requirements for packaged liquor. (emphasis added)*

- 16 Clearly, Parliament’s intent through the enactment of s 36B was to stop the proliferation of packaged liquor outlets across the State, including small and medium sized outlets.

The applicant’s submission in respect of s 36B(4)

⁵ See Western Australian *Parliamentary Debates* (Hansard), Legislative Assembly, 20 February 2018 p324-325

- 17 According to the applicant, s 5 of the Act sets out the primary and secondary objects of the Act, and expressly provides in s 5(2) that the licensing authority “shall have regard to” those objects in carrying out its functions under the Act. The primary objects set out in s 5(1) includes s 5(1)(c):

“to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.”

- 18 It was submitted that the WA Court of Appeal in **Woolworths v Director of Liquor Licensing**⁶ held that the criterion of the ‘public interest’ in s 38(2) of the Act was ‘confined’ by the objects including s 5(1)(c). The Court of Appeal further held that, in evaluating consumer requirements, the notorious fact that ‘in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, was relevant to consumer requirements.
- 19 The applicant further submitted that the usual approach to statutory interpretation is that where the same phrase appears more than once in the same Act, it should be given the same meaning wherever it appears. It was therefore submitted that the fact that ‘requirements of consumers’ in s 5(1)(c) includes questions of convenience, one-stop shopping and shopper preferences suggests that the phrase ‘requirements of consumers’ in s 36B(4) should be interpreted the same way, by reference to the same object.
- 20 The applicant also submitted that the objects in s 5 of the Act are mandatory considerations which inform both the public interest test under s 38(2) and s 36B(4) of the Act and therefore the same meaning to the phrase ‘requirements of consumers’ should be given in s 36B as given to the phrase in s 5(1)(c) by the WA Court of Appeal in **Woolworths v Director of Liquor Licensing**.

The approach to interpreting s 36B(4)

- 21 Succinctly stated, the applicant’s position is that the phrase ‘requirements of consumers’ in s 36B should be given the same meaning as the phrase in s 5(1)(c). The consequence of this approach is that matters of convenience, one-stop shopping and shopper preferences should be considered under s 36B(4).
- 22 With respect, I do not agree with that submission.
- 23 In my view, matters of convenience, one-stop shopping, and shopping preferences fall within the scope of s 38(2) and whether the grant of the application is in the public interest; whereas s 36B(4) is directed towards the requirement of consumers for packaged liquor itself and whether existing packaged liquor outlets in the locality can reasonably meet that requirement.

⁶ **Woolworths v Director of Liquor Licensing** [2013] 45 WAR 446 [49]

- 24 When assessing whether the grant of an application is in the public interest, the factual matters which the licensing authority is bound to take into account are those relevant to the objects of the Act, as set out in s 5.
- 25 As noted by the applicant, one of the primary objects of the Act is to cater to the requirements of consumers for liquor and related services having regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.⁷ In considering whether the grant of an application is in the public interest, the Court of Appeal has held that one-stop shopping, shopper preferences and convenience are relevant matters under object 5(1)(c).⁸
- 26 However, contrary to the applicant's submissions, in my view, the word "requirement" in s 36B(4) must have a narrower construction than what has been applied to the word "requirement" in object 5(1)(c). I arrive at this conclusion for the following reasons.
- 27 First, the plain text in s 36B when considered in the context of the Act as a whole supports the narrow construction, particularly when compared to the text in object 5(1)(c). As I have noted, the Supreme Court has held that for the purposes of object 5(1)(c), and therefore the public interest test under s 38(2), one-stop shopping, convenience and shopping habits etc are relevant considerations, however, the definition of "local packaged liquor requirements" in s 36B is expressed differently to s 5(1)(c) in an important respect. The definition of "local packaged liquor requirements" in s 36B only refers to the "requirement of consumers for packaged liquor" unlike the broader requirement for "liquor and related services, having regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in s 5(1)(c).
- 28 As noted by Bank-Smith J in ***Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police***⁹, s 5(1)(c) requires regard be directed to the proper development of the relevant industries in considering the issue of catering to the requirement of consumers, and catering for consumer requirements is not to be considered in isolation. Adopting a narrow construction of s 36B gives some effect to the deliberate difference in the drafting provisions. This also reinforces the notion that the tests under s 36B(4) and s 38(2) are two separate and distinct tests, albeit there may be some evidentiary overlap. Parliament has specifically chosen to insert a new section into the Act, and not amend s 38. If the test under s 36B(4) and s 38(2) were essentially the same test, s 36B(4) would be otiose and not achieve its statutory purpose.
- 29 Secondly, such an approach is consistent with the clear policy objective of the provision, which is to prevent the proliferation of packaged liquor outlets, including small and medium size outlets, and enable the licensing authority to manage the number of packaged liquor outlets where sufficient outlets already exist within a locality.¹⁰

⁷ Object 5(1)(c)

⁸ ***Woolworths Ltd v Director of Liquor Licensing*** [2013] WASCA 227

⁹ ***Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*** [2017] WASC 88

¹⁰ See the Explanatory Memorandum and Second Reading Speech referenced at [29] and [30]

30 In **SZTAL v Minister for Immigration and Boarder Protection** it was stated:¹¹

The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose....Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.

31 The Court of Appeal in **Mohammadi v Bethune**¹², having referenced **SZTAL**, observed that:

The objective discernment of the statutory purpose is integral to contextual construction. The statutory purpose may be discerned from an express statement of purpose in the statute, inference from its text and structure and, where appropriate, reference to extrinsic materials. The purpose must be discerned from what the legislation says, as distinct from any assumptions about the desired or desirable reach or operation of relevant provisions.

32 A construction that promotes the purpose or object of the law is to be preferred to a construction that does not promote that purpose or object.¹³ As noted recently by Gageler J in **Work Health Authority v Outback Ballooning Pty Ltd**:¹⁴

“one of the surest indexes of a mature and developed jurisprudence is to remember that statutes have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning. The responsibility of a court in performing its constitutionally mandated function of authoritatively attributing meaning to a legislated textis correspondingly to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have.”

“.....the responsibility of the court, in making a constructional choice, is to adopt an authoritative construction of legislated text which accords with the imputed intention of the enacting legislature.”

33 Additionally, extrinsic materials can be considered to confirm the ordinary meaning conveyed by the text of the provision, or to determine the meaning of a provision where the provision is ambiguous or obscure, or where the ordinary meaning gives rise to a result that is manifestly absurd or unreasonable. The extrinsic materials to which regard may be had include second reading speeches in the Legislative Council and Legislative Assembly.¹⁵

¹¹ **SZTAL v Minister for Immigration and Boarder Protection** [2017] HCA 34

¹² **Mohammadi v Bethune** [2018] WASCA 98

¹³ **Interpretation Act 1884** (WA)

¹⁴ **Work Health Authority v Outback Ballooning Pty Ltd** [2019] HCA 2

¹⁵ **Interpretation Act 1884** (WA)

- 34 Therefore, in order to achieve this statutory purpose, a narrow construction of the word “requirements” is necessary, otherwise, adopting a broader construction would allow applicants to mould their application to cater to the subjectiveness of convenience and shopping habits and thereby undermine the restriction in s 36B(4), when the intention of the proposed premises is to merely sell packaged liquor which is readily available within the locality.
- 36 Thirdly, the narrow construction is consistent with the balance of s 36B, namely s 36B(3).
- 37 Section 36B(3) provides a total prohibition on licences being granted for packaged liquor outlets which exceed a prescribed size within a prescribed distance of an existing outlet which is greater than the prescribed size. It is plain that this provision is concerned simply with liquor itself.
- 38 That is, there is no exception to the application of s 36B(3) even if an applicant can demonstrate that a new or different service, which is required by consumers, is to be offered which is not met by existing outlets in the locality. For example, even if the existing outlets do not offer one-stop shopping (as described by Buss J in **Woolworths Ltd v Director of Liquor Licensing** (2013) 45 WAR) and the proposed liquor store does offer one-stop shopping, there is still no capacity for the new licence to be granted. This clearly demonstrates that s 36B(3) is directed at merely liquor itself – by limiting the proliferation of outlets which sell packaged liquor, regardless of the broader services or experiences provided which might serve a consumer requirement in the broad sense.
- 39 There is nothing in the text to indicate that sub-ss 36B(4) and 36B(3) are directed at different ends. To the contrary, the second reading speech demonstrates that sub-ss 36B(4) and 36B(3) are directed to the same end – preventing the proliferation of packaged liquor outlets.
- 40 The way to give effect to this purpose (and limit the supply of liquor into the community) is to adopt a narrow construction which focusses on whether there is a requirement for liquor itself and not on particular nuances of one-stop shopping and convenience.
- 41 Fourthly, the adoption of a narrow construction is supported by the approach of Anderson J in **Liquorland (Australia) Pty Ltd v Austie Nominees Pty Ltd**¹⁶ (Austie) and King CJ in **Lincoln Bottle Shop Pty Ltd v Hamden Hotel Pty Ltd (No 2)**¹⁷ (Lincoln Bottle Shop).
- 42 In **Austie**, Anderson J considered the meaning of the phrase “*requirements of the public for liquor and related services*” which was couched in the same terms in both s 38(1) and s 38(2b) of the repealed provisions of s 38. Section 38(2b) was inserted into the then Act to create a specific restraint on the grant of new liquor store licences. Anderson J held that in order to give effect to parliament’s intent, a narrower interpretation of the phrase “*requirements of the public for liquor and related services*” should be adopted for the purposes s 38(2b) than for the same words in s 38(1). In section 38(2b) “*requirements of the public for liquor and related services*” meant the requirements of the public for liquor

¹⁶ **Liquorland (Australia) Pty Ltd v Austie Nominees Pty Ltd** (1999) 20 WAR 405

¹⁷ **Lincoln Bottle Shop Pty Ltd v Hamden Hotel Pty Ltd (No 2)** (1981) 28 SASR 458

itself, whereas the same phrase in s 38(1) was concerned with the requirement of the public as to matters of taste, convenience, shopping habits, shopper preferences and the like.

- 43 King CJ in ***Lincoln Bottle Shop*** took the same approach to similar provisions in the South Australian legislation.
- 44 Fifthly, the narrow construction was accepted by the Liquor Commission in the recent *ex tempore* decision in proceedings L30/01/506 by rejecting the applicant's argument that "local packaged liquor requirements" encompasses the concept of the convenience of one-stop shopping in the sense of being able to purchase Korean groceries at the same time as purchasing Korean liquor.
- 45 Consequently, in my view, in order to give intent to the obvious legislative policy of restricting the grant of certain licences in order to prevent the proliferation of packaged liquor outlets in the community, s 36B(4) relates to the requirements of consumers for packaged liquor itself, but does not include questions of convenience, one-stop shopping and shopper preferences which are linked to object 5(1)(c) and form part of the public interest considerations under s 38(2).
- 46 In making a value judgement as to whether the local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality, consideration of issues such as the existing availability of packaged liquor in the locality, distribution of premises in the locality and ease of access to the existing premises are relevant factors. This is not an exhaustive list as ultimately the value judgment will be guided by the facts and circumstances of each case and the evidence presented by the applicant when discharging its onus under s 36B(4).

The applicant's evidence

- 47 The application was essentially predicated on convenience and providing one-stop shopping for customers of the Woolworths supermarket.¹⁸ The applicant proposes to offer a basic range of popular brands of liquor with some exclusive products.¹⁹
- 48 According to the MGA report, there are currently six packaged liquor outlets in the surrounding locality, comprising a mix of liquor stores and taverns, which includes two existing BWS outlets.²⁰ There is an existing Liquorland store, which is approximately 350m² in size, located about 100 metres from the entry to the Woolworths supermarket and the Thornlie Tavern & Bottlemart is about 240 metres from the applicant's proposed store.²¹

¹⁸ PIA at pages 6, 7 and 9; MGA report at 2.2

¹⁹ PIA at 2.1

²⁰ MGA report 9.2

²¹ PIA page 20.

- 49 The community survey was conducted in February 2020 using a targeted catchment opt-in census approach. There were 442 surveys completed on-line, a response rate of 6.9%. The following information was provided to respondents:

“There are plans to include a BWS liquor store within the Thornlie Square Shopping Centre (Cnr Spencer Road and Thornlie Avenue). The Centre is an established neighbourhood shopping centre with currently includes Australia Post, two major supermarkets, fresh and takeaway food outlets, beauty services stores, a newsagent, a pharmacy, a medical centre and a gym. The new BWS liquor store will form part of a new Woolworths supermarket that is to take a lease of the current Coles supermarket premises located in the shopping centre. The proposed store will enable shoppers to purchase their packaged liquor at the same time as doing their grocery and other shopping, offering the convenience of one-stop, single trolley shopping.”

“The BWS will have a total floor space of approximately 188m² and will offer the standard BWS services and facilities including a large, diverse range of between 1,500 and 1,800 product lines including local and imported beers, wines and spirits; a modern, upmarket layout and display; a safe and enjoyable shopping environment; friendly, well trained staff; and it will be open every day.”

- 50 The survey then asked respondents a series of questions to gauge community sentiment and the level of support for the grant of the application. The “Strategic Insights” from the survey are:

- close to 3 in 4 residents are either in support of the proposed BWS or hold no view either way;
- in line with support, 3 in 5 residents indicated that they would be likely to shop at the proposed BWS if it were open (59%);
- close to two thirds of residents indicated that being open the same hours as the supermarket where you do your grocery shopping (67%) and located where you can do your supermarket shopping (64%) are important features when purchasing takeaway liquor. Around half indicated that being able to do your grocery and liquor shopping using the same trolley (47%) is important;
- shopping in a safe environment, access to competitive pricing and specials and being able to combine with grocery shopping are the three most appealing aspects residents indicated of the proposed BWS; and
- half of residents did not raise any specific issues or concerns regarding the proposed BWS (50%).

- 51 The survey also indicated that:

- 58% of respondents would find it more convenient to be able to buy takeaway liquor while shopping for groceries;

- of those who have purchased takeaway liquor in the last 12 months, 53% used Liquorland Thornlie, 34% used BWS Lakers and 32 % used other outlets outside the locality, with Dan Murphy's being the most popular;
 - 25% of residents purchase most of their takeaway liquor from Liquorland Thornlie (the most popular outlet), and 28% use other outlets outside the locality.
- 52 Inexplicably, the survey did not ask respondents the most basic question to which s 36B(4) is directed: *do the existing packaged liquor outlets in the locality meet your packaged liquor requirements?* Community surveys lodged in other recent applications by this applicant (BWS Kelmscott and BWS Inglewood) asked respondents that very question, however that question was omitted from the survey submitted with this application.
- 53 In my view, there is little in the survey which assists the applicant discharge its onus under s 36B(4) of the Act. Clearly the application is predicated on offering consumers the convenience of one-stop, single trolley shopping however this is not germane to the issue for determination under s 36B(4). The survey simply reflects matters of convenience and shopper preference.
- 54 The evidence indicates that there are six packaged liquor outlets in the locality, including a reasonably large Liquorland store located in the grounds of the Thornlie Square Shopping Centre, and approximately 100 metres from the applicant's proposed liquor store, and the Thornlie Tavern & Bottlemart about 240 metres from the proposed premises. The Liquorland store can cater to the one-stop shopping needs of customers of the Thornlie Square Shopping Centre. In ***Woolworths (WA) Ltd v Liquorland (Australia) Pty Ltd***²², it was held that in view of an existing tavern adjoining the carpark to the shopping centre, the tavern was effectively part of the shopping centre and any subjective requirement on the part of the relevant section of the public for a liquor store to be located within or adjacent to the supermarket was not objectively reasonable. That application was subsequently refused.
- 55 The locality surrounding the applicant's proposed liquor store would appear to be adequately serviced in terms of access to packaged liquor, and further, but more importantly, the applicant's evidence does not demonstrate that the existing packaged liquor outlets in the locality cannot reasonably meet the local packaged liquor requirements.

Conclusion

²² ***Woolworths (WA) Ltd v Liquorland (Australia) Pty Ltd*** unreported, FCt SCt of WA, 1994

56 The Act is essentially one of regulation, largely directed towards protecting the public.²³ This was reinforced more recently by the Court of Appeal where it was stated by Buss J that “...it is apparent from the primary and secondary objects specified in s 5, in the context of the statute as a whole, and consistently with the long title, that the Act was enacted to regulate the sale, supply and consumption of liquor in Western Australia. The Act was not enacted to promote the sale, supply and consumption of liquor.”²⁴ Buss J went on to observe that:

- primary object 5(1)(a) is to regulate generally the way liquor is sold, supplied and consumed;
- primary object 5(1)(b) is to regulate specifically the sale, supply and consumption of liquor so as to minimise harm or ill-health caused to people or any group of people due to the use of liquor; and
- primary object 5(1)(c) is to regulate specifically the sale, supply and consumption of liquor so as to cater for the requirements of consumers for liquor and related services with regard to the proper development of the liquor, tourism and other hospitality industries. Object 5(1)(c) is formulated by reference to a stipulated nexus between the requirements of consumers for liquor and related services, on the one hand, and the proper development of the liquor, tourism and other hospitality industries, on the other.

57 In balancing these objects, Parliament has determined that there needs to be a restriction or limitation on the grant of licences for packaged liquor outlets. Most liquor sold in Western Australia is packaged liquor which is consumed in unregulated environments. Section 36B(4) reflects Parliament’s concerns about the negative impact that packaged liquor can have on the community and could be considered a pre-emptive harm minimisation strategy, consistent with the regulatory nature of the objects of the Act. This is to be achieved by creating a restraint on the grant of new packaged liquor outlets where existing packaged liquor outlets can already cater to the local packaged liquor requirements. Further, s 36B(4) recognises that the proliferation of packaged liquor outlets is contrary to the proper development of the liquor industry.

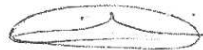
58 By virtue of s 36B(4) of the Act, the licensing authority must not grant a new liquor store licence unless satisfied that the existing packaged liquor outlets in the locality cannot reasonably meet the local packaged liquor requirements. Consequently, the evidentiary burden rests with the applicant.

59 When I considered the evidence presented in this application, I was of the view that the applicant had failed to provide sufficient probative evidence to satisfy me that the local packaged liquor requirements could not reasonably be met by the existing packaged liquor outlets in the locality in which the proposed liquor store is to be located. The test under s 36B(4) is mandatory. Having concluded that the applicant failed to discharge its onus under s 36B(4), the application must be refused.

²³ *Commissioner of Police v Australian Leisure and Hospitality Group Pty Ltd* [2019] WASC 114

²⁴ *Australian Leisure and hospitality Group Pty Ltd v Commissioner of Police* [2020] WASCA 157

- 60 It was therefore not necessary for me to consider whether the applicant had demonstrated that the grant of the application was in the public interest, in accordance with s 38(2).
- 61 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 62 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING