

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICATION REF:** A000188813

**APPLICANT:** WOOLWORTHS LIMITED

**PREMISES:** BWS - BEER WINE SPIRITS GREENFIELDS

**PREMISES ADDRESS:** LOT 101, 96 BORTOLO DRIVE, GREENFIELDS

**NATURE OF APPLICATION:** CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

**DATE OF DETERMINATION:** 17 AUGUST 2016

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### **Introduction**

1. On 19 October 2015, an application was made by Woolworths Limited (“the Applicant”) for the conditional grant of a liquor store licence for premises to be known as *BWS - Beer Wine Spirits Greenfields* and situated at Lot 101, 96 Bortolo Drive, Greenfields.
2. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (“the Act”) and was advertised for comment in accordance with instructions issued by the Director of Liquor Licensing, which resulted in notices of objection being lodged by:
  - (a) Adam Michael Cameron Riley;
  - (b) Hon David Templeman, MLA;
  - (c) Harry Nannup; and
  - (d) Kalbarri Holdings Pty Ltd.
3. To give effect to the provisions of s 16(11) of the Act, a document exchange was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case. Further submissions were only lodged by the Applicant, Mr Riley and Kalbarri Holdings Pty Ltd.
4. Pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties and with regard to the substantial merits of the case, which are briefly summarised below.

### **The substantial merits of the application**

5. The Applicant seeks the conditional grant of a liquor store licence in connection with the construction of an entirely new shopping precinct in Greenfields (“the Centre”). The application was supported by a Public Interest Assessment (“PIA”) and other submissions in order to establish that the grant of the application is in the public interest, “...to meet the genuine requirements of consumers (be they residents, visitors or tourists).”

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6. A copy of the planning approval granted by the Peel Joint Development Assessment Panel in respect of the construction and use of the Centre, including approved uses as 'Supermarket' and 'Retail Liquor Store', was also lodged by the Applicant.
  7. The Applicant's PIA explained that:
    - (a) the City of Mandurah is located approximately 65 kilometres from the Perth CBD; and
    - (b) Greenfields is a suburb that is located east of Mandurah's central area.
  8. The Applicant further described how the City of Mandurah is the fastest growing area in Australia and compared its population forecast for 2015 of 82,120 (based on 69,903 at the 2011 Census count), with the forecasted population growth for 2036 of 123,402; which represents an increase of 50.27%. It was also submitted that the Australian Bureau of Statistics ("ABS") noted the City of Mandurah exhibited a 4.5% average annual growth rate from 2003 to 2013.
  9. With respect to Greenfields itself and the local community, the Applicant noted that:
    - (a) the website *forecast.id.com.au* indicates the population of Greenfields – Parklands will be 14,023 by 2036, which represents a projected increase of 28% from 2011; and
    - (b) the trade assessment report, prepared by Macro Plan Dimasi on 31 January 2014, indicates the forecast population of the primary trade area for the proposed liquor store (i.e. the local community) will be 15,090 by 2026.
  10. The Applicant also submitted that:
    - (a) the *Central Park Mandurah* project, where the Centre will be located, consists of 21 hectares of land and will include shopping, office and commercial facilities as well as accommodation for up to 2,000 residents in around 900 single homes, town houses and apartments; and
    - (b) construction costs of the Centre are estimated at \$12.3 million and the 11.2-hectare site, which backs onto the existing *Masters Home Improvement* store, will not include any residential development, although further *Central Park Mandurah* works have included plans for residential accommodation.
  11. It was also submitted that in the future, the Centre will be the main shopping area in Greenfields, given that the only other shopping facility in the suburb is the *Greenfields Shopping Centre* at 51 Murdoch Drive, which provides eight specialty shops, including a small 250 m<sup>2</sup> grocery store, which provides a very basic range of products and "top up" shopping. Consequently, the Applicant concluded that the *Woolworths Supermarket* trading in the Centre will be the only full-line supermarket in Greenfields to meet the contemporary expectations of the Greenfields community.

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12. According to the Applicant, the proposed BWS Store will be located alongside the Supermarket to form the food and grocery hub of Greenfields. In this regard, the Applicant submitted that it is convenient, commonplace, expected and beneficial for liquor stores to be associated with supermarkets.
  13. At the time of the application, it was submitted that the site was largely a greenfield site, i.e. one that had not yet been built on. As a result of this, the Applicant's market survey report, *Research Findings: Proposed Greenfields BWS Liquor Store, An assessment of community attitudes*<sup>1</sup>, was based on random telephone surveys of 403 individuals who confirmed that they resided in the local community and who were screened to ensure they were aged 18 years old or over.
  14. Of those persons interviewed:
    - (a) 62% indicated a need to purchase liquor;
    - (b) 87% indicated they were purchasers of liquor;
    - (c) 62% indicated that they have purchased packaged liquor within the last six months, from a wide variety of liquor stores, including Greenfields Liquor Store, Dan Murphy's and Liquorland Mandurah Forum;
    - (d) 79% believed they will use the Centre in the future, instead of where they currently shop;
    - (e) 55% of respondents indicated they would be likely to use the new BWS liquor store; with 80% of those respondents indicating they would be likely to visit the proposed BWS liquor store as part of a trip to the Woolworths Supermarket; and
    - (f) 62% indicated support for the proposed BWS liquor store, while 29% thought it was a bad idea and 9% could not say.
  15. The main reasons in support of the application included:
    - (a) convenient location (54%);
    - (b) convenience to buy takeaway liquor and groceries at the same time (35%);
    - (c) increased/more competition (22%);
    - (d) better range/more choice (10%); and
    - (e) better prices/save money (7%).
  16. Accordingly, the Applicant concluded that:
    - (a) the residents of Greenfields do not have the benefit of one-stop shopping at present and that the inadequacy in their household shopping requirements will be addressed by the establishment of the Centre;

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<sup>1</sup> Prepared by West Coast Field Services and dated August 2015.

- (b) the granting of the licence will provide consumers with increased shopping convenience as they will be able to complete their packaged liquor purchases at the same time as completing their grocery shopping (i.e. “one-stop” shopping);
  - (c) if the application is not granted, shoppers using the Centre will be required to make a return road trip of approximately 3.6 kilometres from the Centre to the nearest liquor store; namely Greenfields Liquor Store to purchase liquor; and
  - (d) it “has long been recognised that to expect customers to make a trip of this length having completed a typical visit to a major supermarket to undertake their grocery shopping is considered to be an inconvenient shopping experience and therefore unreasonable in 2015.<sup>2</sup>”
17. The Applicant’s PIA also addressed how the grant of the application would advance the Act’s objects and those matters prescribed in s 38(4) of the Act; analysing the potential positive and negative impacts associated with the application and, where potential negative impacts were identified, considered how they may be addressed or managed. In relation to the characteristics of the area under review, the Applicant submitted that the Socio-Economic Indexes for Areas (“SEIFA”)<sup>3</sup> confirm that the Greenfields community experiences a level of disadvantage.
18. However, in relation to the SEIFA indices, the Applicant submitted that they provide a mixed picture and while they show disadvantage, they should not lead to an adverse finding in respect to the application, given the findings of a number of reports, which find that other factors may also be relevant<sup>4</sup>. As an example, the Applicant submitted that the presence of the at-risk groups must be viewed with regard to:
- (a) the type and nature of the business to be operated (i.e. on-premises versus off-premises consumption);
  - (b) whether or not there are any potentially sensitive facilities located near the proposed licensed premises that could be particularly attractive to the at-risk groups, thereby resulting in higher numbers possibly congregating near the proposed liquor store;
  - (c) whether or not the at-risk groups already have access to liquor stores and if there is an existing opportunity, then it is highly unlikely the BWS Store (due to the type and nature of the business to be operated, as described by this

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<sup>2</sup> In relation to this assertion, the Applicant submitted that there are a number of authorities in not only Western Australia but also in South Australia and NSW which have recognised that it is a reasonable requirement, based on convenience, for members of the public to purchase their liquor at the same time and at the same place that they do their household shopping (see *Charlie Carter Pty Limited v. Streeter and Male Pty Limited & Another*. Full Court of the Supreme Court of Western Australia. Delivered 21 June 1991, (1991) 4 WAR, which relied upon the findings in *Vine v. Smith* (1980) 1 NSW LR 261; *Taylor v. Toohey* (1982) 1 NSW LR 493 at 497-498; *Carjay Pty Ltd v. Target Cellars Pty Ltd* (1972) 3 SAR 484 at 491; *David Jones (Aust) Pty Ltd v. Fahey* (1989) 50 SASR 323 at 35; and *Edgecock v. Myer Western Stores Ltd* (unreported) Supreme Court NSW Yeldham J 2-4 (1984) at 14.

<sup>3</sup> The SEIFA index compares the relative social and economic conditions of cities, towns and suburbs across Australia and is calculated using a range of variables related to relative disadvantage, such as low income, low educational attainment, unemployment and dwellings without motor vehicles.

<sup>4</sup> Such as the Australian Institute of Health and Welfare 2013 *National Drug Strategy Household Survey report*.

document) could result in a change of consumer behaviour towards alcohol consumption, other than the place where it might be purchased from; and

- (d) the current levels of crime and harm within the areas under review, and whether the population has demonstrated an ability to consume alcohol responsibly.

19. Consequently, the Applicant submitted that:

- (a) there are existing licensed premises in the locality and the proposed liquor store does not introduce an ability for residents to purchase packaged liquor for the first time;
- (b) there is less risk surrounding this application when compared with a hotel or tavern operation<sup>5</sup>;
- (c) the BWS Store will meet a public expectation that its products be available as part of a customer's daily or weekly shopping requirements at the Centre, rather than making an additional trip to purchase their liquor requirements elsewhere; and
- (d) there are no potentially sensitive facilities near the proposed store which may be frequented by at-risk groups and which are susceptible to adverse impact by the grant of the licence.

20. Similarly, the Applicant asserted that any potentially negative aspects of the application must be balanced against the problems that may be caused to residents of the locality if the application is refused, such as loss of employment opportunities and economic benefits.

21. The Applicant also submitted that:

- (a) residents of the locality are reasonably entitled to a modern, well appointed supermarket that includes, as part of its product mix, the sale of packaged liquor from an associated BWS store; and
- (b) mitigation measures play a significant role in the assessment process of any application, noting that in *Martin Morris & Jones Pty Ltd v Shoalhaven City Council* [2012] NSWLEC 1280, the Land and Environment Court of NSW found that while there are inherent risks associated with the sale of liquor, the ability of such risks (if any) of the specific proposal to be addressed by harm mitigation measures and experienced management is evidence in support of the approval.

22. The Applicant noted that Greenfields and the City of Mandurah fall within the South Metro Health Region and that key findings of the *Alcohol and Other Drug Indicators Report – South Metro Health Region* prepared by the Western Australia Drug and Alcohol Office, found that:

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<sup>5</sup> The consumption of alcohol can occur both on and off a hotel or tavern premises. Where the consumption of alcohol occurs on the licensed premises, it occurs almost simultaneously with the purchase of that alcohol. In off-premises venues the consumption does not occur on the licensed premises but elsewhere. The actual consumption of the alcohol can also occur days, weeks or months following the actual sale).

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- (a) while State-wide rates of drinking at risk of single occasion alcohol-related harm are decreasing, the South Metro Region demonstrated a greater proportion of abstainers (40.6% to 36.1%) in addition to smaller proportions of low risk (50.4% to 53.1%) and risky drinkers (9.0% to 10.8%);
- (b) estimated per capita pure alcohol consumption for the South Metro Health Region is consistently lower than the WA rate, with the most recent evidence (2009/10) demonstrating that the South Metro Health Region consumes an average of 1.35 litres fewer than WA on average, equating to 10.91% less in comparison with the State average; and
- (c) between 2007 and 2010, pure alcohol consumption reduced in the South Metro Health Region by 3.16% (i.e. 0.36 litres).
23. In relation to health impacts, the Applicant submitted that the rate of alcohol related hospitalisations in the City of Mandurah (which included the locality) is significantly lower than the State rate (i.e. 0.87) and in relation to the South Metro Health District, the data illustrates that chronic and acute alcohol related health conditions, alcohol related hospitalisations and death due to all alcohol-related conditions occur at rates that are significantly lower than the corresponding State rates.
24. The Applicant also submitted that the same report, together with information sourced from the Police website, showed that overall crime is low in the South Metro Health District, with rates of domestic violence assault and non-domestic violence assault being significantly lower in this region when compared with the rates for Western Australia as a whole. At a suburb level, the Applicant also submitted that the rate per 100,000 population for all types of assaults is marginally lower in Greenfields when compared to the Western Australian average and while there is no current data available to it regarding the level of alcohol related crime occurring in Greenfields, as general crime is low in Greenfields, therefore it is possible to extrapolate that alcohol related crime is also low.
25. Accordingly, the Applicant asserted that the application represents a balanced assessment and reasonable analysis of the likely further impact resulting from the operation of the licence at the BWS Store, given that:
- (a) Woolworths has developed and successfully implemented its operational policies and procedures over many decades of trading, which act as mitigation measures against potential harms;
- (b) the grant of the application will not result in the introduction of the availability of packaged liquor sales in the locality for the first time;
- (c) the approval of the BWS Store does not have the potential to cause consumer behaviour to deteriorate; and
- (d) the BWS Store will meet the “one-stop” shopping requirements of customers to the Supermarket and Centre.

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### The substantive merits of the objections

*Mr Adam Michael Cameron Riley*

26. On his notice of objection, dated 7 January 2016, Mr Riley declared an indirect pecuniary interest in the refusal of the application on the basis that he had formally sought the grant of a liquor store licence in Mandurah, which was refused. Additionally, during the processing of the application, it became evident that Mr Riley is a director of SS Trading WA Pty Ltd, licensee of premises known as *Liquor Barons Seascapes*, which trades pursuant to a liquor store licence in the Mandurah suburb of Halls Head.
27. Mr Riley's objection proceeded on the following grounds:
- (a) that the grant of the application would not be in the public interest (s 74(1)(a) of the Act refers), because Greenfields is a crime hotspot<sup>6</sup>;
  - (b) that the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor (s 74(1)(b) refers), because there are schools and medical centres around the corner in Lakes Road, including substance abuse clinics;
  - (c) if the application were granted:
    - (i) undue offence, annoyance, disturbance or inconvenience would be likely to occur (s 74(1)(g)(i) refers) 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,; and
    - (ii) the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated, would in some other manner be lessened (s 74(1)(g)(ii) refers), because BWS (Woolworths) have a high degree of theft from their stores, which attracts undesirables due to their policies; and
    - (d) that the grant of the application would otherwise be contrary to the Act (s 74(1)(j) refers), because Mr Riley's application for the grant of a liquor store licence at a premises located approximately one kilometre away from the premises subject to the current application was refused.
28. Mr Riley further submitted that it "is common knowledge in Mandurah that greenfields [*sic*] is a location where there is a large instance of criminal activity...Greenfields liquor itself and the shopping centre in greenfields [*sic*] has more than a fair share of criminal problems." Amongst other matters, Mr Riley also submitted that he believed that there is alcohol abuse in the Greenfields area, which is inconsistent with Woolworths' policy that shoplifters and thieves shouldn't be approached when they are stealing.

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<sup>6</sup> Although Mr Riley's objection asserted that WA Police crime statistics supported the assertion that Greenfields is a crime hotspot, no crime statistics were provided as part of the objection.

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*Hon David Templeman, MLA*

29. The Hon David Templeman, MLA, Member for Mandurah objected to the application due to concerns that the northern area of Mandurah was already serviced by a number of medium to large liquor stores, including Liquorland at the Mandurah Forum Shopping Centre and the family owned Greenfields Liquor Store, which has serviced the Greenfields community for many years.
30. Accordingly, Mr Templeman submitted that another liquor store of this size is simply not required or warranted to service the Mandurah community.

*Mr Harry Nannup*

31. Mr Nannup, a Senior Elder in the Mandurah Region, objected to the grant of the application on the grounds that it would not be in the public interest and would cause undue harm or ill-health to people, or any group of people, due to the use of liquor.
32. According to Mr Nannup:
- (a) the community does not need another liquor store, given the existing number of licensed premises in the greater Mandurah area; and
  - (b) alcohol consumption has never been good for the health and wellbeing of Aboriginal people and all forms of violence has a link to the abuse of alcohol, which, together with other drugs, have destroyed many families.

*Kalbarri Holdings Pty Ltd*

33. In the notice of objection, dated 14 January 2016, Kalbarri Holdings Pty Ltd ("the Licensee Objector") declared, as the licensee of the Greenfields Liquor Store, that it has a pecuniary interest in the refusal of the application.
34. The objection proceeded on the following grounds:
- (a) the grant of the application would not be in the public interest;
  - (a) the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; and
  - (b) the grant of the application would otherwise be contrary to the Act.
35. In relation to the first ground of objection, it was submitted that:
- (a) the Applicant's heavy reliance on one-stop shopping convenience as the basis for the grant of the application:
    - (i) does not, of itself, justify the grant of the application particularly as there is a packaged liquor outlet approximately one kilometre from the proposed store; and
    - (ii) is not supported by the statistical and survey evidence upon which the Applicant relies to support the application;

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- (b) there is significant opposition to the grant of the licence from members of the Greenfield community; and
- (c) the use of “tourism” as a basis to support the application misconstrues the locality and type of population using Greenfields facilities in comparison to the facilities in the City of Mandurah and its coastal precincts, given that Greenfields is a residential suburb and not a tourist destination.
36. The Licensee Objector also noted that the:
- (a) Greenfields Liquor Store is located approximately one kilometre from the proposed liquor store and that the Centre cannot be considered a large suburban shopping centre, such as Mandurah Forum, which is located approximately 1.75 kilometres from the proposed liquor store; and
- (b) Centre will comprise only a Woolworths supermarket and eight other smaller stores, whereas Mandurah Forum contains approximately 121 stores and submitted that the Centre would clearly be considered to be a neighbourhood shopping complex.
37. In relation to the Applicant’s survey data, the Licensee Objector asserted that it does not support the application, because:
- (a) 75% of the residents of Greenfields are currently undertaking their “general household shopping” at Mandurah Forum; and
- (b) 42% of those residents nevertheless do not make use of the one-stop-shopping at Mandurah Forum for liquor purchasers, but prefer instead to patronise separately the *Greenfields Liquor Store*, despite the fact that in Mandurah Forum there is a large *Liquorland* outlet which sells packaged liquor.
38. The Licensee Objector further:
- (a) submitted that the grant of the current application will double the packaged liquor selling capacity in Greenfields for an inherently residential population, in an area that is already sufficiently serviced by packaged liquor outlets; and
- (b) lodged a survey signed by 285 of its customers, who oppose the grant of the application.
39. In relation to the grant of the application causing undue harm or ill-health due to the use of liquor, the Licensee Objector submitted that:
- (a) an additional licensed premises permitted to sell packaged liquor has the potential to increase harm and ill-health already being caused by liquor in the locality, noting as a member of the local liquor accord, that local police consistently report at accord meetings that alcohol related harm is a problem within the Greenfields and surrounding areas;
- (b) licensee members of the accord have adopted a range of measures to reduce the likelihood of alcohol related harm being caused as a result of the sale or

supply of liquor from their respective premises and the grant of another licensed premises “is highly unlikely to assist in reducing the rate and incidents of alcohol related harm being caused in the Greenfields community;

- (c) there are a number of at risk groups within the community that may be adversely affected by the grant of the licence, as the suburbs of Greenfields and Coodanup, which forms part of the locality, can be considered to be in a poor socio-economic position, given their SEIFA rankings; and
  - (d) personal income for persons in Greenfields are low when compared to the State average and unemployment figures are significantly higher than the State average.
40. In relation to the grant of the application otherwise being contrary to the Act, the Licensee Objector outlined the primary object of the Act found at s 5(1)(c) of the Act and questioned whether it was in the “proper development of the liquor industry” for well established national businesses to ‘cannibalise’ sales from existing outlets, such as the Greenfields Store, which is an independent and family owned business.
41. Appended to the objection, was a letter from Hon Kim Hames MLA, Member for Dawesville, in which Dr Hames expressed concern for the increasing number of liquor outlets within Mandurah and the surrounding areas and stated his objection to the application, on the grounds that Mandurah is already more than adequately serviced by the existing outlets.

### Determination

42. In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, Buss JA observed that:
- “By s 5(2), in carrying out its functions under the Act, the ‘licensing authority’...shall have regard to the primary objects of the Act and to certain secondary objects.”
43. Buss JA also set out the statutory framework for a determination of an application of this nature as follows:
- (a) by s 38(2) of the Act, the Applicant must satisfy the licensing authority that the granting of the application is “in the public interest”;
  - (b) the expression “in the public interest” when used in a statute, imports a discretionary judgement, confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O’Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175);
  - (c) the factual matters the licensing authority is bound to take into account in such a determination are:

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- (i) those relevant to the primary and secondary objects of the Act as prescribed in s 5 of the Act; and
  - (ii) those prescribed in s 38(4) of the Act;
- (d) that s 5 is mandatory, whereas s 38(4) is permissive;
- (e) on the proper construction of the Act (in particular ss 5, 16, 30A, 33 and 38), the licensing authority is obliged to take into account the public interest in:
- (i) catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry; and
  - (ii) facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State.
44. Pursuant to s 73(10) of the Act, the burden of establishing the validity of an objection lies on the objector and in these proceedings, the objectors have relied upon the following grounds of objection:
- (a) that the grant of the application would not be in the public interest; or
  - (b) that the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or
  - (c) that if the application were granted:
    - (i) undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, .
    - (ii) the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened; and
  - (d) that the grant of the application would otherwise be contrary to the Act.
45. Where concerns are raised about potential alcohol-related harm and ill-health as a possible determinative factor in an application, I must assess the risk, not in some abstract sense, but rather in regard to the proved circumstances of the particular area in relation to which the application is made (refer Allanson J in *Carnegies Realty Pty Ltd -v- Director of Liquor Licensing* [2015] WASC 208 and Wheeler J in *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258). As such, I must:
- (a) make findings that specifically identify any existing level(s) of harm and ill-health in the locality, due to the use of liquor;
  - (b) make findings about the likely degree of harm to result from the grant of the application;
  - (c) assess the likely degree of harm to result from the grant of the application against the existing harms; and

- (d) weigh and balance the likely degree of harm, together with any other relevant factors, to determine whether the Applicant has established that the grant of the licence is in the public interest.
46. Based on a consideration of the evidence before me I am satisfied, on the balance of probabilities, that there is an existing level of alcohol-related harm and ill-health in the locality, although there is nothing in the material before me to establish that the levels of harm are above that which would normally be acceptable in such a community. In this regard, it cannot be concluded that levels of harm or ill-health can be characterised as high, based solely on a consideration of the SEIFA index by itself.
47. Ipp J in *Executive Director of Health v Lily Creek International Pty Ltd & Others* (2000) 22 WAR 510 stated that, “whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in *Malec v JC Hutton Pty Ltd*, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.”
48. Therefore, while I accept that the introduction of another liquor store in the locality may cause an increase in harm or ill-health based on the materials submitted by the parties, there is nothing in that material to support a conclusion that any increase would be to such a level that would be unacceptable to the community or contrary to the Act’s harm minimisation object.
49. Advancing the primary object of the Act set out in s 5(1)(c), involves an assessment as to whether an application will cater for the requirements of consumers for liquor and related services, with regard to *inter alia* the proper development of the liquor industry in Western Australia. In the context of this application, this involves an assessment of whether the application will cater for the requirements of consumers for liquor and related services and whether the grant of the application would be consistent with the proper development of the liquor industry?
50. I have noted that the population of Greenfields is expected to experience considerable growth in the coming years and therefore I accept that the grant of the application will cater for the liquor requirements of current and future residents of the locality. I also accept that members of the public shopping at the Centre will benefit from the grant of the application by being able to combine their liquor purchases with their weekly grocery shopping.
51. In relation to the second issue, it was suggested by the Licensee Objector that it is not in the “proper development of the liquor industry” for well established national businesses to ‘cannibalise’ sales from existing outlets, such as the Greenfields Store, and as such, the grant of the application would therefore be contrary to the Act. This ground of objection infers that an independent store cannot compete with a national business and will therefore lose custom and close; an inference that is not supported by any evidence.

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52. Conversely, I have noted the Licensee Objector's own submission that despite there being a large *Liquorland* outlet at the *Mandurah Forum* shopping centre, where 75% of the residents of Greenfields currently undertake their "general household shopping"; 42% of those residents do not make use of the one-stop-shopping at *Mandurah Forum*, but prefer instead to patronise the *Greenfields Liquor Store*. Accordingly, I cannot conclude that the granting of the application would be contrary to the Act.
53. Many of the objectors, including the Hon David Templeman, MLA and Mr Nannup, have also suggested that the proposed liquor store is not needed in the locality as it is already adequately serviced. In my view, these assertions appear to rely upon the notion of a needs test <sup>7</sup>.
54. In my view, such opinions are misplaced and are not determinative of the application, given that the repealed needs test is no longer applicable. Additionally, it is not particularly relevant that some residents or members of the public believe that they are sufficiently catered to by existing licensed premises in the area, but rather whether it is in the interest of the community to grant the application. In this respect, the Applicant's survey data indicates that many members of the local community would benefit from the grant of the application.
55. Further to this, the Licensee Objector also submitted a Customer Catchment Survey signed by 285 of its patrons, which indicated whether or not the customers:
- (a) opposed the grant of the application;
  - (b) considered that harm or ill-health problems may increase if another liquor store operates in Greenfields in addition to the Licensee Objector's premises; and
  - (c) whether or not the grant of another liquor store is in the public interest of Greenfields.
56. In regards to the nature of the questions on the Licensee Objector's Customer Catchment Survey, I have noted that in *Springbok Foods Pty Ltd v Director of Liquor Licensing and Others* [LC26/2014] the Liquor Commission found that the "nature of the questions in the witness petitions about the public interest and minimising harm or ill-health to anyone in the locality are of limited value as there is no evidence that the petitioners are aware of the importance of these terms in the context of the Act." Accordingly, I also find that there is no evidence before me that the Licensee Objector's customers were made aware of the importance of these terms in the context of the Act and I likewise conclude that the Licensee Objector's Customer Catchment Survey is misplaced and of limited evidentiary value.

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<sup>7</sup> Prior to the amendments to the Act introduced by the *Liquor and Gaming Legislation Amendment Bill 2006*, such an application would be determined on a "needs test" by reference to the number of licensed premises already existing in the relevant area and a key reform introduced by the Bill was the creation of a public interest test for new licences to replace the needs test.

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57. Similarly, the assertion by Mr Riley that the previous refusal of a similar application should form the basis for refusing the current application is also rejected, given that s 33(2) of the Act requires the licensing authority to consider each application on its own merits.
58. In relation to Mr Riley's allegations regarding Woolworths' policy of not approaching shoplifters and thieves, the Applicant advised that this is incorrect and that it devotes significant resources to pro-active systems and processes, including having key personnel monitor Woolworths' internal theft database and obtain Police statistics to identify trends in criminal activity, assess risks and take immediate action.
59. While I have accepted that the grant of the licence will cater for the requirements of the current and future populations of the locality, there are some aspects of the Applicant's submissions that I do not accept, including:
- (a) assertions that the Centre will be able to provide one-stop shopping as misguided, given that the Applicant appears to confuse the concept of one-stop shopping, as discussed by Buss JA in *Woolworths v Director of Liquor Licensing* [2013] WASCA 227. In that determination, His Honour found that it was a "notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres" and it is my view that the evidence does not establish that the Centre is a large district or regional shopping centre that is capable of providing consumers with one stop shopping;
  - (b) the claim that there is an expectation of consumers that a BWS Store will be co-located alongside a Woolworths supermarket, given that there are many Woolworths Supermarkets in the community that are not associated with a BWS liquor store; and
  - (c) the submission that liquor forms part of a Woolworths supermarket's 'product mix', given the long held principle that alcohol is no ordinary commodity; but is actually a product that may have negative consequences in the community, requiring its extensive regulation, unlike regular grocery items (refer *Liquorland (Australia) Pty Ltd v Commissioner of Police & Others* [LC 18/2015]).
60. However, notwithstanding this and after having regard to all of the evidence before me, I find that:
- (a) there is insufficient evidence to conclude that the grant of the licence would lead to harm or ill-health, to people or any group of people, to such a level that would be considered unacceptable to the community and therefore the granting of the application would be consistent with the primary object of the Act as set out in s 5(1)(b);
  - (b) the granting of the application will cater for the requirements of consumers, including both existing and future residents of the locality, for liquor and related services, consistent with the primary object of the Act as set out in s 5(1)(c);

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- (c) given the location of the proposed liquor store in a new shopping centre development, the grant of the licence will add to the amenity of the locality, which is relevant pursuant to s 38(4)(b) of the Act; and
- (d) the granting of the application is not likely to result in offence, annoyance, disturbance or inconvenience over and above that which results expressly from the establishment and operation of the Centre, which is also a relevant consideration pursuant to s 38(4)(c) of the Act.
61. As a result of those findings, I am satisfied that the Applicant has discharged its onus under s 38(2) of the Act and that the grant of the application is in the public interest. Conversely, I consider that each of the objectors have failed to discharge their onuses, pursuant to s 73(10) of the Act.
62. I am also satisfied that the Applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest.
63. Accordingly, the licence is conditionally granted, subject to the following conditions:
- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
- (b) compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premise;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 19 October 2015;
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements dated 26 October 2015 being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to Applicant wishing to trade under the licence;
- (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- (f) the applicant seeking confirmation of the grant on or before 17 August 2017, pursuant to s 62(4)(c) of the Act.
64. The following conditions will be imposed on the issue of the licence:
- (a) Trading Hours:  
The permitted trading hours are those prescribed in s 98D of the Act. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.
- (b) Trading Conditions:
- (i) The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

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- (ii) The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.
- (c) Tasting Condition:
- (i) Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:
- (1) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
  - (2) Tastings cannot be supplied to juveniles.
  - (3) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
  - (4) Compliance with the *Food Act 2008* at all times.
  - (5) Tastings per sample must not exceed the following measures:
    - a) Wine – 50 mls
    - b) Beer – 100 mls
    - c) Spirits – 15 mls.
  - (6) Free drinking water must be made available at all times that samples of liquor are available for tasting.
- (d) Compliance with Harm Minimisation policy:
- The licensee has lodged a copy of the House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.
- (e) Profit Sharing Authorised
- Pursuant to s 104 of the Act the turnover rental arrangements entered into by the licensee, Woolworths Limited, and the owner, Fabcot Pty Ltd, as contained in the Agreement for Lease lodged with the licensing authority on 16 October 2015.

### General

65. Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
66. The Applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
67. 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.

68. This matter has been determined by me under delegation pursuant to s 15 of the Act.

A handwritten signature in black ink, appearing to read 'Brett Snell', written in a cursive style.

Brett Snell  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING