

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Liquorland (Australia) Pty Ltd
(represented by Mr Steve Standing and Ms Triska DiCicco of Herbert Smith Freehills formerly Freehills)

Intervener: Commissioner of Police
(represented by Mr Peter Spragg of State Solicitor's Office)

Objectors: Greystone Holdings Pty Ltd
(represented by Mr Burditt Krost of Strategic Planning Institute Pty Ltd)

Ms Eva Marjanovic

Mr Domenic Italiano

Pukeko Nominees Pty Ltd

Skiptar Pty Ltd

Mr Robert and Ms Janet Atkins

and the following 12 objectors represented by Mr Phil Cockman, Canford Hospitality Consultants Pty Ltd:

- Blistered Bobtail Pty Ltd and Blueray Holdings (as licensees of Cellarbrations Liquor Store at Mundaring)
- Ms Rhonda Christinge
- Mundaring Chamber of Commerce
- Ms Claire Elizabeth Tomlinson
- The Reverend Wendy Gilbert
- Dr Jeremy Harrison

- Ms Janet Lorraine Milburn
- Mundaring Lottery Centre and News
- Ms Lisa Powell
- Mr Andrew Brock
- Ms Maureen Loveland
- Ms Margaret and Mr Paul Wilson

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan (Member)
Mr Eddie Watling (Member)

Premises: Liquorland Mundaring, Shop 20 and 21
Mundaring Village Shopping Centre, 7295
Great Eastern Highway, Mundaring

Matter: Application for a conditional grant of a liquor
store licence referred to the Liquor
Commission under section 24 of the *Liquor
Control Act 1988*

Date of hearing: 21 March 2013

Date of Determination: 2 July 2013

Determination: The application is granted.

Authorities referred to in the Determination:

- *Minister for Resources: ex parte Cazaly Iron Pty Ltd [2007] WASCA 175 Palace*
- *Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *Minister for Resources: ex parte Cazaly Iron Pty Ltd [2007] WASCA 175*
- *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*
- *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142*
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258*

Background

- 1 On 2 July 2012, an application was lodged by Liquorland (Australia) Pty Ltd (“the applicant”) for the conditional grant of a liquor store licence for premises to trade as Liquorland Mundaring, situated at shops 20 and 21, Mundaring Village Shopping Centre, 7295 Great Eastern Highway, Mundaring (“the premises”).
- 2 A range of documentation was submitted to support the application including a Public Interest Assessment (“PIA”), proposed floor plans, regional police data, local government section 40 Certificate, premises lease agreement, Data Analysis Australia Surveys Report, Bodhi Alliance Social and Planning Assessment Report and details of the proposed Management Plan and Code of Conduct.
- 3 On 26 July 2012, an assessment of the plans and specifications was undertaken by an inspector of premises, Department of Racing, Gaming and Liquor (“the Department”) with a schedule of requirements being provided. There were no major compliance issues to be addressed.
- 4 On 13 August 2013, the Commissioner of Police (“the Police”) lodged a notice of intervention.
- 5 On 15 August 2013, Ms Eva Marjanovic lodged an objection, based on the harm and ill-health aspects that might arise from increasing the number of liquor outlets in the Shire of Mundaring.
- 6 On 16 August 2013, a notice of objection was lodged by Greystone Holdings Pty Ltd (the licensee of the Stoneville Liquor Store) on the grounds that there are inaccuracies in the PIA and that the materials submitted by the applicant fails to establish that the application is in the public interest.
- 7 On 7 September 2012, the Director of Liquor Licensing (“the Director”), pursuant to section 24 of the *Liquor Control Act 1988* (“the Act”) referred the application to the Liquor Commission (“the Commission”) for hearing and determination. At the same time an application by Woolworths Ltd for the conditional grant of a liquor store licence for Woolworths Liquor within the same shopping precinct was also referred to the Commission.
- 8 Between 7 September 2012, and the date of the hearing, 21 March 2013, further submissions and responsive submissions were received from the applicant, intervener and the objector Greystone Holdings Pty Ltd.
- 9 On various dates in November 2012 all objections with the exception of those lodged by Greystone Holdings Pty Ltd and Ms Eva Marjanovic were struck out on the ground that the objections had not been made out as they could not be verified by supporting evidence, as required under section 73(10) of the Act.
- 10 A hearing before the Commission took place on 21 March 2013.

Submissions on behalf of the applicant

- 11 The applicant seeks to operate a liquor store at shops 20 and 21 in the Mundaring Village Shopping Centre (“the Centre”) and located approximately 60m from a Coles Supermarket situated in an adjacent building. The proposed premises will have a total area of approximately 270m² and shall include:
 - a selling area of 187m² (69%)
 - a cool room area of 56.5m² (21%)
 - a stock area of 26m² (10%)
- 12 The Centre is a “village style” grouping of retail outlets and other service providers and the proposed liquor store will replace an existing sports store and an adjoining vacant retail space – Shops 20 and 21. Principal access to the Centre from Great Eastern Highway whilst heading east is via Nichol Street and there is easy access from Stoneville Road. The Centre contains a large car park with approximately 200 bays.
- 13 Approximately 150m west of the Centre is another shopping centre known as the Mundaring Mall which contains a Woolworths supermarket and is subject to a liquor store application to establish a Woolworths Liquor Store at shops 1 and 3.
- 14 The surrounding area within a 3km radius encompasses, wholly or partly, the suburbs of Parkerville, Mahogany Creek, Mundaring, Sawyers Valley, Mount Helena and Stoneville. The Bodhi Alliance Report submitted with the PIA has also concluded that the catchment area would likely be extended to that of the current reach of the Coles Supermarket which draws customers from the suburbs of Gorrie, Beechina, Chidlow, York, Northam and Toodyay.
- 15 It was submitted that the estimated population of the Shire of Mundaring as per the 2006 census was 36,629 and predicted to increase to 38,107 in 2012 and to 50,596 by 2031.
- 16 Liquorland is an experienced licensee, currently operating 83 liquor stores in Western Australia and has a proven effective management style which is consistent with the objects of the Act.
- 17 In relation to satisfying the licensing authority that granting the application is in the public interest, it was submitted:

Harm or ill-health – section 38(4)(a) of the Act

- An analysis of “at risk” groups was provided based on the Bodhi Alliance “Social and Planning Assessment Report” (“Bodhi Report”) and concluded that the population of the area that feeds into the Mundaring shopping precinct is not a high risk population. Further, the locality is not experiencing a significant level of socio-economic disadvantage and in fact, the indicators suggest that the locality is relatively socio-economically advantaged when compared to the rest of the State.
- Social health indicators and WA Police Statistics also indicate that

alcohol-related harm issues in the locality and wider region are comparatively lower than corresponding State rates.

Impact on amenity – section 38(4)(b)

- The store will service the needs of the growing population, generate local employment opportunities and provide convenient local facilities for the growing population of the area. The locality and vicinity are well serviced by public transport and it is noted in the Bodhi Report that “vehicle and pedestrian traffic increase is not significant with the addition of the store as the store is in an existing centre. The store may even reduce traffic movements in the City Centre due to the improved opportunity for customer(s) to ‘one-stop shop’.”
- With regard to streetscape and atmosphere of the area, as an after-hours trader, the store will enhance that part of the Centre by increasing activity, lighting and presence. The proposed premises will not create noise or anti-social activities that will detrimentally affect the locality’s amenity.
- In respect of security of the area, the Bodhi report concluded that “the store is not expected to have any negative impact on community safety as the proposed store performs well against the *Crime Prevention Through Environmental Design* criteria and is in a low risk community in terms of alcohol related harm”.

Offence, annoyance, disturbance or inconvenience – section 38(4)(c)

- The target clientele of Liquorland Mundaring will be persons who buy liquor at the Centre as part of their household shopping, or for whom vehicular access by well-established major road routes is convenient. It is not expected that any offence, annoyance, disturbance or inconvenience will be caused to people who live and work in the vicinity from its operation beyond what would otherwise be expected (and is already occurring) from the operation of the centre.
- 18 The applicant submitted evidence of public support for the application, collated from a survey of residents and shoppers in the locality and likely catchment area. The survey was undertaken by Data Analysis Pty Ltd (“DAA Report”). In total there were 300 telephone and 259 intercept interviews. The survey results analysed by the DAA Report provide strong, objective evidence that the store’s facilities are sought after and will be used by a significant proportion of the locality and immediate surrounding areas.
- 19 In the process of compiling the application there had been wide community consultation with key stakeholders (Shire of Mundaring, Mundaring Police Station, Mundaring Chamber of Commerce, Alcoholics Anonymous (WA), and Frank Knight the managers of the Centre) and identified “sensitive premises” within a 200m radius of the store (Uniting Church, Mundaring Anglican Church, Mundaring Community Church, Hills Community Support Group, Hills Child Care Centre and the Mundaring Medical Centre). The consultation details are a component of the Bodhi Report which concluded that in respect of sensitive premises and key stakeholders, no conflicts were identified between sensitive uses and the proposed store.

20 In addition to the proposed Liquorland Mundaring Store catering for the packaged liquor requirements of consumers in the locality the applicant concluded that based on the objective evidence lodged in support of the application it has been clearly shown that there is public support by residents and workers within the locality for the shopping convenience in conjunction with shopping trips to the Centre and/or Coles Supermarket offered by the premises.

Submissions on behalf of the Commissioner of Police

21 The Commissioner of Police (“the Police”) intervened in the application proceedings for the purpose of making representations on the grounds that:

“If the particular application was granted and/or conditions not imposed public order or disturbance would be likely to result, or as to any other matter relevant to the public interest.”

22 In support of the intervention the Police submitted that after reviewing the applicant’s PIA there were concerns regarding the following:

- an existing level of harm in the locality; and
- the impact of an additional liquor store licence within the local community.

23 It was submitted that whilst the applicant’s survey of consumers indicate support for the proposed premises and its services, police are concerned with the considerable amount of respondents (36% of telephone surveys and 44% of intercept surveys) indicating their lack of support. Concerns were commonly raised on the grounds that the proposed premises would impact local independent liquor stores and that there were adequate existing liquor outlets.

24 Although outlet density in the locality is minimal it cannot be ignored that an additional liquor store in the locality has the potential to cause public disorder and public harm.

25 Across all of the assault measures (e.g. total offences, residential, on-site premises, night time offences) investigated, the strongest associations were consistently found for volumes of alcohol sold by off-site outlets, the increased likelihood of violence ranged from 17% to 26% per additional 10,000 litres of pure alcohol sold “an average off-site outlet sells about 12,700 litres per annum”, (Chikritzhs and Liang, 2010) evidencing that an increase in alcohol sales from liquor stores has the propensity to escalate levels of violence in residential settings and other licensed premises.

26 Statistical data utilizing the Police Incident Management System (“IMS”) and the Computer Aided Dispatcher System (“CAD”) reveal that there was existing harm in the locality. Although police attendances within the immediate vicinity of the proposed premises were relatively low, the overall alcohol related harm and offending in the locality is of primary concern to Police.

27 The Police do not support the application due to sufficient liquor store outlets

and existing harm in the locality, however, if the licensing authority is of the opinion that the granting of the licence is in the public interest it is requested that the following conditions be imposed:

- trading Hours – 8.00am to 10.00pm Monday to Saturday and 10.00am to 10.00pm on Sunday;
- dress Standards – The licensee must refuse entry to the licensed area to any person wearing a jacket or any other clothing bearing patches or insignia including accoutrements, jewellery, visible tattoos, branding or any other items which indicates membership or association with Outlaw Motorcycle Gangs;
- advertising – No promotions, advertising or incentives which encourage the sale of cheap or discounted liquor or which encourage excessive consumption;
- Closed Circuit Television (“CCTV”) –
 - a system is to be in place and operational at all times covering the internal access/egress of each entrance and exit of the premises;
 - these cameras must allow clear identification of patrons;
 - the system must comply with the Director’s policy relating to CCTV; and
 - images recorded via the CCTV system must be retained for thirty (30) days and must be made available for viewing or removal by the police or other persons authorized by the Director.
- signage – signage is to be placed in all service areas that state the following:
 - “Pursuant to the *Liquor Control Act 1998*, it is an offence to;
 - sell liquor to a drunken person;
 - aid a drunken person in obtaining or consuming liquor; or
 - supply liquor to a juvenile on licensed or regulated premises.

Penalty: Up to \$10,000.”

- 28 The Police lodged an application for the Woolworths and Liquorland applications to be considered simultaneously so as to ensure that the Commission was able to ascertain the potential impact of approving both applications in the same shopping precinct.
- 29 By letter dated 13 February 2013, the police sought leave and received Commission’s approval to introduce as evidence in the proceedings a report entitled “Access to Alcohol Outlets, Alcohol Consumption and Mental Health” (“the Pereira Report”).
- 30 The Police also listed case law relevant to the term “public interest” and submitted that the potential for harm and ill-health is to be taken into account

by the licensing authority irrespective of whether the prospect is a possibility or probability as this is a powerful public interest consideration.

- 31 There are eight (8) existing licensed premises in the suburb of Mundaring and a total of sixteen (16) existing licensed premises in Mundaring and surrounding suburbs. Importantly, there already exists a liquor store within approximately 100m walking distance of the proposed premises which would also be approximately 250m from the proposed Woolworths Liquor Shop premises, if approved.
- 32 The Second Reading Speech for *the Liquor and Gaming Legislation Amendment Bill 2006*, which introduced the public interest in place of the previous needs test, indicates that the proliferation of liquor outlets is undesirable and contrary to the public interest.
- 33 The undesirable proliferation of liquor outlets is supported by the findings of the Pereira Report which found that the number of liquor stores in a neighbourhood was strongly associated with harmful alcohol consumption, with each additional liquor store in a neighbourhood associated with a 6% increase in the mean numbers of days for harmful alcohol consumption.
- 34 Further references were made to other alcohol related harm observed in the Pereira Report.
- 35 In a responsive submission to the applicant's contention that there are weaknesses in the Pereira Report, it was submitted that the alleged weaknesses in the report findings are not sufficient to undermine the positive association between increased availability of alcohol and increased harmful consumption established by the report, particularly in the absence of any contradictory evidence from the applicant regarding the liquor stores it operates.

Submissions on behalf of the objectors

- 36 The objection lodged by Ms Eva Marjanovic was based on the grounds that the number of liquor outlets within the Shire of Mundaring and particularly in close proximity to each other does not justify the addition of two further outlets and is not in the best interests of the public. No further submissions were received and Ms Marjanovic did not participate in the hearing process.
- 37 Greystone Holdings Pty Ltd, the licensee of the Stoneville Liquor Store licence lodged an objection on the grounds:
 - that the Shire of Mundaring erred by executing a section 40 certificate by accepting that the proposed liquor store was a "specialty shop" rather than a "convenience shop" under the meanings as applied under the terms of Town Planning Scheme 3;
 - the existing outlet density is high and with up to two additional outlets it would be high in the extreme;
 - lower prices are a likely outcome from increased competition and the role that price can have on consumption is well documented in the body of literature surrounding licensing matters;

- increasing the economic and physical availability of alcohol in a community is linked to increased levels of harm.
- 38 Subsequent to the lodging of the objection by Greystone Holdings Pty Ltd, additional material was lodged by the objector in relation to the Shire of Mundaring's section 40 certificate issuing process and a map identifying the location of packaged liquor outlets in the catchment area. The Commission by its letter dated 18 October 2012 advised that it did not have jurisdiction to deal with town planning issues.
- 39 Submissions were made regarding the implications of proliferation of outlets and an analysis made of the applicant's PIA, the DAA Report and the Bodhi Report with the conclusion that overall, the applicant's materials fail to establish that the application is in the public interest and therefore should not be granted.
- 40 Greystone Holdings Pty Ltd also lodged further submissions which included several research reports highlighting alcohol related harm including a survey report entitled "Stoneville Liquor".
- 41 It was submitted that the grant of one or more licences within the small community of Mundaring is not in the public interest for the following reasons:
- the amenity of not only the village style locality but also the outlying villages within the catchment surrounding the locality will inalterably be changed;
 - the increased impact of the presence of the liquor industry in terms of the outlets themselves and the related signage, advertising and other promotion has been shown to be detrimental to the youthful population in the context of normalization of liquor;
 - there would be an increase in harm and ill-health within the community.

Determination

- 42 An applicant for the grant of a liquor store licence must, pursuant to section 38(2) of the Act, satisfy the licensing authority that the grant of the application is in the public interest.
- 43 Determining whether the grant of an application is "in the public interest" requires the Commission to exercise a discretionary value judgment confined only by the subject matter and the scope and purpose of the legislation (refer *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd [2007] WASCA 175* and *Palace Securities Pty Ltd v Liquor Licensing (1992) 7 WAR 241*). The Commission notes the words of Tamberlin J in *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142* where he said:

"The reference to "the public interest" appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the

legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.

The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances”.

44 Furthermore, advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities* supra). The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimize harm caused to people, or any group of people, due to the use of liquor; and
- 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.

45 Each application must be considered on its merits and determined on the balance of probabilities pursuant to section 16 of the Act. However, it is often the case when determining the merits of an application that tension may arise between advancing the objects of the Act, particularly the objects of minimizing alcohol related harm and endeavoring to cater for the requirements of consumers for liquor and related services. When such circumstances arise, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

46 Pursuant to section 33(1) of the Act the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest. In *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 EM Heenan J described the “absolute discretion” provided for under section 33(1) in the following terms:

The “absolute discretion” to grant or refuse an application of (sic) any ground or for any reason that the Commission considers in the public interest, s 33(1), is an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole: Hermal Pty Ltd v Director of Liquor Licensing [2001] WASCA 356 [6] – [7] (Wallwork J) and Palace Securities v Liquor Licensing (1992) 7 WAR 241, 249-250 (Malcolm J) and 263 (Wallwork J). Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest or make those objects the exclusive considerations nor the sole determinants of the public interest: Re Michael: Ex parte Epic Energy (WA) Nominees Pty Ltd [2002] WASCA 231; (2002) 25 WAR 511, [52] – [55]; O’Sullivan v Farrer [1989] HCA 61;

(1989) 168 CLR 210, 216 and *Jericho Nominees Pty Ltd v Dileum Pty Ltd* (1992) 6 WAR 380, 400.

- 47 Also, section 19 of the *Interpretation Act 1984* provides that regard may be had to extrinsic material, including the Second Reading Speech to a Bill, when considering the meaning and intent of a written law.
- 48 The Commission has considered all material lodged including the PIA and subsequent submissions received from all parties.
- 49 The Police have intervened on the basis that if the particular application was granted and/or conditions not imposed, public order or disturbance would be likely to result, or as to any other matter relevant to the public interest. The Notice of Intervention included data on existing alcohol related harm in the locality.
- 50 In respect of the potential for public disorder or disturbance as a consequence of granting this licence, the Commission is unable to reach such a conclusion based on the evidence and material that has been submitted. The IMS and CAD statistical data provided reveal that police attendances within the immediate vicinity of the proposed premises were relatively low and the Commission is of the view that the granting of a licence is unlikely to create public disorder, disturbance or negative impacts on the amenity.
- 51 The objector has submitted that the local village atmosphere of the shopping precinct would be adversely affected through the granting of this application, the result of which would be a loss of amenity for the Mundaring community. The Commission is not persuaded by this argument and accepts the applicant's submission that it is in the public interest that the proposed store will assist in the activation of the Centre.
- 52 Therefore, the main issue that the Commission needs to address in considering this application is that of harm and ill-health that might be caused through the granting of this licence for a moderate size liquor store of 270 m². The question of outlet density raised by both the Police and the objectors is a matter that the Commission has closely considered in association with the findings of the "Pereira Report" and the response to that report on behalf of the applicant by Dr John Henstridge.
- 53 In respect of the Act, outlet density is not a matter that is prescribed as requiring direct consideration by the licensing authority, other than within the objects of the Act-to repeat,

5(1) *the primary objects of the Act are –*

- (a) *to regulate the sale, supply and consumption of liquor; and*
- (b) *To minimize harm or ill-health caused to people, or any group of people, due to the use of liquor; and*
- (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.*

54 The Commission is familiar with specific reference to outlet density in the studies *Predicting Alcohol Related harms from licensed outlet density: A feasibility study* (Chikritzhs, Catalano, Pascal and Henrickson, 2007) and *the Pereira Report*. The Second Reading Speech for *the Liquor and Gaming Legislation Amendment Bill 2006*, which introduced the public interest test in place of the previous needs test is also relevant and states:

“.....the government does not consider the proliferation of liquor outlets to be in the public interest and proliferation is not an outcome that would be supported by the public interest test”.

55 It is therefore a matter for the Commission to determine whether the granting of this licence could be constituted as a proliferation of licences and therefore not in the public interest. The objector Greystone Holdings Pty Ltd has argued that the existing outlet density is high and with a further one or two additional outlets it would be high in the extreme contributing to lower prices through the resultant competition thereby causing an increase in the level of harm and ill-health in the community. The objection lodged by Ms Eva Marjanovic is based on similar grounds.

56 Although the Commission is mindful of a possible vested commercial interest and a desire to prevent further competition in its market catchment by the licensee objector, nonetheless, the objection must be determined on its merits.

57 In the Commission’s view none of the objectors made out their objections as required by section 73(10) of the Act however this is not fatal to the extent that the Commission can take note of the objectors’ view. Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health [2013] WASC 51* held at para 30 that

“...Each single objector might, individually, fail to satisfy an onus of establishing an objection, but the cumulative effect of the evidence might lead to the conclusion that an applicant has failed to satisfy its ultimate onus of showing that the application was in the public interest”.

58 Whilst the grant of this licence would represent an increase in the current packaged liquor floor space in the Mundaring shopping precinct this does not in itself mean that the granting of the application would be contrary to the objects of the Act and/or not in the public interest.

59 A considerable amount of material was submitted by the applicant in support of the application, including a report *“Surveys Concerning a Proposed Liquor Store in Mundaring”* prepared by Data Analysis Australia and a report *“Social Planning Assessment Report Proposed Liquorland Mundaring”* prepared by Bodhi Alliance and the following factors have been taken into account by the Commission in assessing the application:

- the granting of the licence would be consistent with the objects of the Act – refer para 53 above;
- that given the particular local, social, demographic and geographic circumstances of this application, on the balance of probabilities there is little likelihood that the granting of the licence will result in increased public disorder, disturbance or negative impacts on the amenity.

- the responsible management credentials of the Liquorland outlets are well established;
- there is sufficient evidence before the Commission by the applicant that establishment of a moderate Liquorland liquor store adjacent to a Coles Supermarket will provide in addition to a one-stop shopping convenience for consumers, greater product choice;
- it is apparent from the material before the Commission that there is currently a high level of “leakage” from the Mundaring area to Midland and other centres for liquor purchases, indicating that the requirements of consumers in Mundaring for liquor and related services are not currently being catered for adequately.

60 Having considered all of the material before it, the Commission gives greater weight to the evidence of the applicant and is persuaded that the grant of the application could not be construed as contributing to a proliferation of liquor licences in this area and that it is in the public interest to grant a licence that will cater for the requirements of consumers for liquor and related services and will be consistent with the proper development of the liquor industry in the Mundaring area. The Commission makes the point that in reaching its determination it has no mandate to consider the potential financial impacts on existing liquor store businesses.

61 The Commission is therefore satisfied, based on the evidence, that the applicant has discharged its onus under section 38(2) of the Act and the grant of this application is in the public interest. In reaching this determination the Commission has considered the request by the Police to impose certain conditions on the licence, however, accepts the position put by the applicant that some of the suggested conditions do not have a special relevance to this application and will be covered by the Director’s policies. Therefore the normal conditions that apply to a liquor store licence will apply.

62 The Commission emphasizes that while each of the applications by Woolworths Ltd and Liquorland (Australia) Pty Ltd has been assessed and determined on its own merits the evidence in both applications has been considered holistically to determine what is in the public interest in relation to the township of Mundaring.

63 Accordingly, the application for the conditional grant of a liquor store licence is granted.



**MR JIM FREEMANTLE
CHAIRPERSON**