

## ATTACHMENT A

## SCHEDULE OF DOCUMENTS - FOI 3521

Document no.	Date	Pages	Description	Decision on access <sup>1</sup>	Relevant provision of FOI Act
1	29 September 2021	8	Ministerial Discretion Request (Stage 1) - Currambine, WA	REI	section 22 - part section 38 - part
2	29 November 2021	9	Ministerial Discretion Request (Stage 2) - Currambine, WA	REI	section 22 - part section 38 - part

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<sup>1</sup> REI = Release with exempt and irrelevant information removed.



Australian Government  
Department of Health

Ministerial Submission – Standard  
MS21-001026  
Version (1)  
Date sent to MO: 29/09/21

RECEIVED  
1 2 OCT 2021  
Parliamentary Section

To: Minister Hunt

Subject: MINISTERIAL DISCRETION REQUEST (STAGE 1) - CURRAMBINE, WA

Critical date: 03 November 2021. Legislation requires you to decide whether or not to consider this request within three months of its receipt. If no decision is made by the critical date, you will be taken to have decided not to consider this request.

Recommendation:

That you DECIDE whether to:

1. CONSIDER this request to exercise your discretionary power **1. Consider request**

OR

2. NOT CONSIDER this request to exercise your discretionary power **2. Not consider request**

Signature .....

Date: 8/10/2021

Media Release required? YES/ NO

Comments:

Contact Officer:	Harry Rothenfluh	Assistant Secretary, Provider Support and Systems Branch, Benefits Integrity and Digital Health Division	(02) 6289 5001 s22
Clearance Officer:	Daniel McCabe	First Assistant Secretary, Benefits Integrity and Digital Health Division	(02) 6289 5306 s22

**Issues:** s38 (Applicant) has made a request that you exercise your discretionary power under section 90A of the *National Health Act 1953* (Act) to approve the Applicant to supply pharmaceutical benefits at Unit 1, 10 Sunlander Drive, Currambine, WA, 6028 (proposed premises).

Under subsection 90A(2) of the Act, you may substitute a decision by the Secretary to not approve a pharmacist for the purpose of supplying pharmaceutical benefits at particular premises (prior decision) with a decision approving the pharmacist.

You may only approve the pharmacist if the prior decision was made on the basis the application did not meet the requirements of the rules determined under s 99L of the Act, relevantly here, the National Health (Australian Community Pharmacy Authority Rules) Determination 2018 (PB 46 of 2018) (Pharmacy Location Rules). Additionally, you may only substitute a decision approving the Applicant if you are satisfied:

- a) the prior decision will result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist
- b) it is in the public interest to approve the Applicant.

Further information regarding your discretionary power is detailed in (**Attachment A**).

**Background:**

On 4 May 2021, the Applicant applied under Item 130: New pharmacy (at least 1.5 km) of the Pharmacy Location Rules, for approval to supply pharmaceutical benefits at the proposed premises. One of the requirements of Item 130 is that there is, within 500 m of the proposed premises, a supermarket of at least 2,500 m<sup>2</sup>.

On 21 May 2021, the Australian Community Pharmacy Authority (Authority) considered the application and found that there was no supermarket within 500 m by straight line of the proposed premises.

The Authority cannot recommend approval of an application unless all relevant criteria are met. Therefore, the Authority was required to recommend to the Secretary's delegate the application not be approved.

On 30 June 2021, the Secretary's delegate rejected the application.

On 4 August 2021, s38 made a request on behalf of the Applicant for the exercise of your discretionary power to approve the Applicant to supply pharmaceutical benefits at the proposed premises (**Attachment B**).

**Submissions by the Applicant:** The Applicant's submissions and claims as to why approval should be granted are set out in the request at (**Attachment B**), and are summarised below:

- a) The proposed pharmacy is in the Perth suburb of Currambine, located approximately 30 km from the Perth Central Business District. Currambine is primarily a residential suburb, and has a community centre, shopping centre and two primary schools.
- b) The nearest approved pharmacy is approximately 1.3 km from the proposed premises, in the nearby suburb of Kinross.
- c) The proposed premises is co-located with the Sunlander Medical Centre (Centre) and Sunlander Dental Centre, and is currently trading without approval to supply pharmaceutical benefits.

- d) There are no other pharmacies in Currambine, which means that all Currambine residents must leave the suburb to access pharmaceutical and medical services. (*The Department notes this claim is incorrect given the existence of the Centre in Currambine*) This is a significant imposition particularly on young and elderly residents and particularly during the COVID19 pandemic when stay at home orders and restrictions on movement outside a resident's suburb are imposed. In addition, there are several major and busy roads which separate Currambine from the other pharmacies and medical services in the region.
- e) The Centre has been operating since June 2013 and is the only medical centre in the immediate vicinity of the proposed premises. It operates 8 am - 7 pm weekdays and 8 am - 1 pm Saturdays (a total of 60 hours a week). The Centre is a mixed billing practice offering access to five general practitioners, an aesthetic clinic, pathology services, an on-site psychologist, and a pharmacy (the proposed premises).
- f) The Sunlander Dental Centre located adjacent to the proposed premises operates 8 am - 5 pm Monday to Saturday (a total of 54 hours a week) with three dental practitioners.
- g) The community comprises the patients of the Centre and Sunlander Dental Practice who are currently without reasonable access to pharmaceutical benefits. This community is not dissimilar to the community identified by you in the case of *Freedom Pharmaceutical Pty Ltd v Minister for Health* [2021] FCA 213 ("Freedom Case") in which you were satisfied that, despite an approved pharmacy being only 60 m from the subject premises and a further 14 approved premises being located within a 2 km radius of the subject premises, the community made up of the group of people who attend the relevant medical centre would be left without reasonable access to pharmaceutical benefits.
- h) There are nine pharmacies within a 6 km radius of the proposed premises. Despite this, you ought to weigh that against the fact that by approving the applicant, the members of the community in addition to the broader Currambine community, would not need to leave the vicinity of the Centre to obtain pharmaceutical benefits.
- i) There is significant development planned for Currambine, with a development approval granted for a supermarket of 2,485 m<sup>2</sup>, a liquor store, a café and 186 car parking bays, which is expected to be developed within the next four years. Further development is planned for a health and wellness precinct for senior including an aged care facility for 138 seniors consisting of 88 residential care beds and 50 apartments. This will undoubtedly result in a significant increase to the Currambine population, particularly for the senior demographic.
- j) According to a *Macroplan Trade Area Analysis and Market Assessment of Sunlander Pharmacy* report prepared for the applicant in July 2021:
- the resident population of the trade area for the Sunlander Pharmacy was estimated at 7,470 in mid 2021, and is projected to reach 8,120 by 2031, reflecting an average annual population growth rate of 0.9 per cent
  - the average age of the trade area population is 35.5 years
  - the majority of households are couples with dependent children (52.1 per cent) compared to the metropolitan benchmark of 47 per cent
  - 8.5 per cent are single parent households compared to the metropolitan benchmark of 8.2 per cent
  - the 0-14 age group accounts for an estimated 20.2 per cent of the population in the area which suggests that the community has a high number of dependent persons who are

reliant on their caregivers to provide adequate healthcare, including provision of pharmaceutical benefits

- the median age at death for people in Currumbine – Kinross is 76 compared to the national median age of 81, with hospital admissions for renal dialysis relatively high in the area, as is the prevalence of osteoporosis
  - there are nine pharmacies including the Joondalup Hospital pharmacy and 10 GP clinics within 5.8 km by road of the proposed premises
- k) There are nine pharmacies including a hospital pharmacy within 1.3 km to 5.7 km by road from the proposed premises, the majority of which are separated from Currumbine by busy roads and highways making them difficult to travel to for seniors and young families, especially since 2.17 per cent of households in the trade region do not have a car and 24.22 per cent of households have access to only one car
- l) It is in the public interest that people who visit the Centre and the Sunlander Dental Practice have access to pharmaceutical benefits in the location from which are receiving medical attention.
- m) Unless the Applicant's request is approved:
- the Currumbine community will be left without reasonable access to pharmaceutical benefits
  - the Currumbine community will continue to suffer from a lower than average age at death
  - the health needs of the community particularly the needs of dependent children and retirees will be unaddressed and may decline resulting in an increased strain on the public health system

**Correspondences:** The following correspondences in support of approval of the pharmacy were included with the request for approval (see **Attachment B**):

- letter dated 15 August 2020 from Ian Goodenough MP, Federal Member for Moore
- letter dated 28 May 2021 from Mrs Trischa Botha, Liberal candidate for the Western Australia State Election 2021 and Secretary of the Arise Aboriginal and Torres Strait Islander Corporation.

Also included with the Applicant's request are 23 form letters from patients of the Sunlander Pharmacy, and a petition comprising approximately 853 paper based signatures in support of the proposed pharmacy (see **Attachment B**). The Department notes some of the signatures on the petition are from people who reside outside the community, including Kinross residents. The Court has previously found that it is relevant to consider the existence of any community support, such as a petition, for the granting of approval, but that the presence of community support is not sufficient to meet the test of whether the granting of approval is in the public interest. Rather, it is necessary to consider whether granting approval would be in the public interest more generally.

**Material facts:** It is recommended you make the following findings of fact, based on the material in this Ministerial Submission, including the Department's research (**Attachment C**):

- a) The proposed premises are in Currambine, approximately 30 km north west of the Perth Central Business District.
- b) The Department's research found, according to data from the Australian Bureau of Statistics (ABS) 2016 Census data and ABS Quickstats, in 2016 in Currambine:
- the resident population of Currambine was 6,912, with an estimated resident population of 6,999 in 2021
  - 9 per cent of the population was 65 years and older, compared to 15.8 per cent of the Australian population
  - 96.2 per cent of households had access to at least one motor vehicle, higher than the 89.1 per cent of Australian households with motor vehicle access
  - the unemployment rate was 7.1 per cent, only slightly higher than the national unemployment rate of 6.9 per cent.
- c) The Department's research found the pharmacy is currently operating at the proposed premises (co-located with the Centre), without approval to supply pharmaceutical benefits, 8 am – 7 pm weekdays and 8 am - 2 pm on Saturday (a total of 61 hours a week).
- d) The Department's research found the Centre is open 8 am – 7 pm weekdays and 8 am – 1 pm Saturday (a total of 60 hours per week) and offers general practice services by four advertised general practitioners, onsite pathology, onsite nurse, an aesthetic clinic, and an onsite psychologist. The Sunlander Dental Clinic is also co-located in the same building, and operates 9 am - 5 pm Monday to Saturday
- c) The Department's pharmacy approval data indicates there is one approved pharmacy in Currambine, located within approximately 3 km by road (5 minute drive) of the proposed premises in the Currambine Central Shopping Centre. The Shopping Centre has ample parking and offers a range of retail and essential facilities including but not limited to: Woolworths Supermarket, health and beauty; fashion; food and drinks.
- d) The Department's pharmacy approval data indicates there are 11 approved pharmacies located within approximately 6 km by road of the proposed premises, in Currambine (1), Kinross (2), Joondalup (7), and Iluka (1), five of which are located within approximately 3 km by road (5 minute drive) of the proposed premises which residents of Currambine and patients of the Centre, in need of pharmaceutical benefits, can access:
- SuperChem Kinross, approximately 1.3 km by road (3 minute drive) from the proposed premises, open 8 am - 8 pm daily (a total of 84 hours a week)
  - Kinross Pharmacy, approximately 1.8 km by road (3 minute drive) from the proposed premises, open 8:30 am - 6:30 pm weekdays, 8:30 am - 2 pm Saturday and 9 am - 1 pm Sunday (a total of 59.5 hours per week)
  - Joondalup Pharmacy, approximately 2.7 km by road (5 minute drive) from the proposed premises, open 8 am - 8 pm daily (a total of 84 hours a week)
  - Currambine Pharmacy, approximately 3 km by road (5 minute drive) from the proposed premises, open 8 am - 8 pm weekdays, 8 am - 6 pm Saturday and 11 am - 5 pm Sunday (a total of 76 hours per week)
  - Iluka Plaza Pharmacy, approximately 3 km by road (5 minute drive) from the proposed premises, open 8.30 am - 6.30 pm weekday, 9 am - 5 pm Saturday and 9 am - 1 pm Sunday (a total of 62 hours per week).

- e) There are currently no shopping facilities nearby the proposed premises, unlike many of the approved pharmacies which are located nearby supermarkets.

The Department has prepared a map to provide a visual representation of the pharmacies, medical centres and supermarkets in the area surrounding the proposed premises (**Attachment D**).

**Considerations:** It would be open to you to decide to consider the Applicant's request if you can be satisfied the request has a reasonable prospect of meeting the criteria in subsection 90A(2) of the Act. The criteria are that the Secretary's decision would result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist; and it is in the public interest to approve the Applicant.

#### *Relevant community*

It is necessary you form an opinion as to a group of people which constitutes a community, as well as what level of access to pharmaceutical benefits you consider to be reasonable.

The Applicant claims the relevant community includes the patients attending the Medical Centre which is co-located with the proposed premises, the Dental Practice and the residents of Currumbine who reside in the immediate area surrounding who require reasonable access to pharmaceutical benefits from the proposed premises.

In deciding whether the request has reasonable prospects of meeting the criteria in subsection 90A(2) of the Act, it would be reasonable for you to consider whether not approving the proposed premises would leave this community without reasonable access to pharmaceutical benefits supplied by an approved pharmacist.

#### **Recommendation:**

**Option 1 – Consider:** The Department believes it would be open to you to decide to consider the application further (option 1) based on the following:

- you may consider that approval of the proposed premises will enhance the community's access to pharmaceutical benefits based on the fact the proposed premises is located with other health services
- you may consider it unreasonable for the patients of the Centre to travel between approximately 1.3 km and 6 km by road to the nearest approved pharmacies to access pharmaceutical benefits after their consultation at the Centre.

**Option 2 – Not consider:** The Department believes it would be open to you to decide not to consider the application further (option 2) based on the following:

- the presence of 11 approved pharmacies within approximately 6 km by road of the proposed premises, is such that the community already has reasonable access to pharmaceutical benefits, particularly considering 96.2 per cent of Currumbine households have access to a vehicle

- you may consider that the existing pharmacies provide reasonable access to pharmaceutical benefits particularly as many open beyond the opening hours of the Centre, including the nearest approved pharmacy, SuperChem Kinross which opens extended hours from 8 am – 8 pm daily
- you may consider the applicant should wait until the planned development of the area near the proposed premises is complete, as they may then satisfy the criteria of the Pharmacy Location Rules
- there is no other compelling information before you indicating it would be in the public interest to approve the Applicant.

**Attachments:**

**A:** Summary of Ministerial discretion process and Location Rules

**B:** The Applicant's request for approval

**C:** Department's research

**D:** Map of proposed premises, nearest approved pharmacies, medical centres and supermarkets.

**Sensitivities:** If you decide to consider the request, you will have a further three months from the date of that decision in which to decide, under subsection 90B(5) of the Act, whether or not to exercise your discretion (stage 2 decision).

In total, since you became Minister for Health, you have received 129 valid requests to exercise your discretionary power. You have exercised your discretionary power to approve a pharmacy premises on 41 occasions and declined 76, with five withdrawn. There are currently seven pending.

**Consultation:** If you decide to consider the request, the Department will invite comment from the nearest approved pharmacist/s.

THIS DOCUMENT HAS BEEN RELEASED UNDER  
THE FREEDOM OF INFORMATION ACT 1982  
BY THE DEPARTMENT OF HEALTH



Minister	<b>Minister Hunt</b>
PDR Number	<b>MS21-001026</b>
Subject	MINISTERIAL DISCRETION REQUEST (STAGE 1) - CURRAMBINE, WA
Critical Date	<b>03 November 2021</b>
Quality Assurance Check (completed by line area)	s22 [REDACTED]
Contact Officer	Harry Rothenfluh (02) 6289 5001 s22 [REDACTED]
Clearance Officer	Daniel McCabe (02) 6289 5306 s22 [REDACTED]
Division/Branch	Health Resourcing   Benefits Integrity & Digital Health
Has Budget Branch been consulted if there are financial implications?	Not Applicable

**Adviser/DLO Comments:**

Return to  
Dept for:

Redraft

THIS DOCUMENT HAS BEEN RELEASED UNDER THE FREEDOM OF INFORMATION ACT 1982 BY THE DEPARTMENT OF HEALTH

To: Minister Hunt

Subject: MINISTERIAL DISCRETION REQUEST (STAGE 2) - CURRAMBINE, WA

**Critical date: 7 January 2022.** Legislation requires you to make a decision whether or not to approve the request, within three months of deciding to consider the request for approval. If no decision is made by the critical date, the request will be deemed to be not approved.

<b>Recommendation/s:</b>			
<b>1. Approve</b> the Applicant to supply pharmaceutical benefits at the proposed premises		<b>1. Approve</b>	
<b>OR</b>			
<del><b>2. Not approve</b> the Applicant to supply pharmaceutical benefits at the proposed premises</del>		<del><b>2. Not approve</b></del>	
<b>And</b>			
<b>3. Note</b> the submissions from a third party at <u>Attachment 4</u>		<b>3. Noted</b>	
<b>4. Note</b> the response from the Applicant at <u>Attachment 5</u>		<b>4. Noted</b>	
Signature  .....		Date: 24/12/2021	
Media Release required? YES/ NO			
Comments:			
Contact Officer:	Luke Bricknell	A/g Assistant Secretary, Provider Support and Systems Branch, Benefits Integrity and Digital Health Division	Ph: (03) 6221 1528 Mobile: s22
Clearance Officer:	Daniel McCabe	First Assistant Secretary, Benefits Integrity and Digital Health Division	Ph: (02) 6289 5306 Mobile: s22

**Issues:** s38 (Applicant) has made a request that you exercise your discretionary power under section 90A of the *National Health Act 1953* (Act) to approve the Applicant to supply pharmaceutical benefits at Unit 1, 10 Sunlander Drive, Currambine, WA, 6028 (proposed premises).

Under subsection 90A(2) of the Act, you may substitute a decision by the Secretary to not approve a pharmacist for the purpose of supplying pharmaceutical benefits at particular premises (prior decision) with a decision approving the pharmacist.

You may only approve the pharmacist if the prior decision was made on the basis the application did not meet the requirements of the rules determined under s 99L of the Act, relevantly here, the National Health (Australian Community Pharmacy Authority Rules) Determination 2018 (PB 46 of 2018) (Pharmacy Location Rules). Additionally, you may only substitute a decision approving the Applicant if you are satisfied:

- a) the prior decision will result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist
- b) it is in the public interest to approve the Applicant.

Further information regarding your discretionary power is detailed in (**Attachment A**).

**Background:**

On 4 May 2021, the Applicant applied under Item 130: New pharmacy (at least 1.5 km) of the Pharmacy Location Rules, for approval to supply pharmaceutical benefits at the proposed premises. One of the requirements of Item 130 is that there is, within 500 m of the proposed premises, a supermarket with a gross leasable area of at least 2,500 m<sup>2</sup>.

On 21 May 2021, the Australian Community Pharmacy Authority (Authority) considered the application and found that there was no supermarket within 500 m by straight line of the proposed premises.

The Authority cannot recommend approval of an application unless all relevant criteria are met. Therefore, the Authority was required to recommend to the Secretary's delegate the application not be approved.

On 30 June 2021, the Secretary's delegate rejected the application.

On 4 August 2021, s38 made a request on behalf of the Applicant for the exercise of your discretionary power to approve the Applicant to supply pharmaceutical benefits at the proposed premises (**Attachment 2**).

On 8 October 2021, you decided to consider the Applicant's request (see MS21-001026 at **Attachment 2**).

On 14 October 2021, the Department advised the Applicant of your decision (**Attachment 3**).

On 18 October 2021, the Department issued notices, under section 90D of the Act, to the owner/s of the three nearest approved pharmacies, inviting submissions on the request. Submissions were received from two pharmacies (see **Attachment 4**).

As the submission included allegations that the pharmacy at the proposed premises is dispensing pharmaceutical benefits by way of internet linked to the nearest approved pharmacy (owned by the Applicant), on 4 November 2021 the Department invited the Applicant to respond to this allegation.

In a response dated 9 November 2021, the Applicant refuted the allegations made by the third parties. The Department's letter to the Applicant and the response is at **Attachment 5**.

**Submissions by the Applicant:** The Applicant's submissions and claims as to why approval should be granted are set out in the request at (**Attachment 2**), and are summarised below:

- a) The proposed pharmacy is in the Perth suburb of Currambine, located approximately 30 km from the Perth Central Business District. Currambine is primarily a residential suburb, and has a community centre, shopping centre and two primary schools.
- b) The nearest approved pharmacy is approximately 1.3 km from the proposed premises, in the nearby suburb of Kinross.
- c) The proposed premises is co-located with the Sunlander Medical Centre (Centre) and Sunlander Dental Centre, and is currently trading without approval to supply pharmaceutical benefits.
- d) There are no other pharmacies in Currambine, which means that all Currambine residents must leave the suburb to access pharmaceutical and medical services. (*The Department notes this claim is incorrect given the existence of the Centre in Currambine*) This is a significant imposition particularly on young and elderly residents and particularly during the COVID19 pandemic when stay at home orders and restrictions on movement outside a resident's suburb are imposed. In addition, there are several major and busy roads which separate Currambine from the other pharmacies and medical services in the region.
- e) The Centre has been operating since June 2013 and is the only medical centre in the immediate vicinity of the proposed premises. It operates 8 am - 7 pm weekdays and 8 am – 1 pm Saturdays (a total of 60 hours a week). The Centre is a mixed billing practice offering access to five general practitioners, an aesthetic clinic, pathology services, an on-site psychologist, and a pharmacy (the proposed premises).
- f) The Sunlander Dental Centre located adjacent to the proposed premises operates 8 am - 5 pm Monday to Saturday (a total of 54 hours a week) with three dental practitioners.
- g) The community comprises the patients of the Centre and Sunlander Dental Practice who are currently without reasonable access to pharmaceutical benefits. This community is not dissimilar to the community identified by you in the case of *Freedom Pharmaceutical Pty Ltd v Minister for Health* [2021] FCA 213 ("Freedom Case") in which you were satisfied that, despite an approved pharmacy being only 60 m from the subject premises and a further 14 approved premises being located within a 2 km radius of the subject premises, the community made up of the group of people who attend the relevant medical centre would be left without reasonable access to pharmaceutical benefits.
- h) There are nine pharmacies within a 6 km radius of the proposed premises. Despite this, you ought to weigh that against the fact that by approving the Applicant, the members of the community in addition to the broader Currambine community, would not need to leave the vicinity of the Centre to obtain pharmaceutical benefits.
- i) There is significant development planned for Currambine, with a development approval granted for a supermarket of 2,485 m<sup>2</sup>, a liquor store, a café and 186 car parking bays, which is expected to be developed within the next four years. Further development is planned for a health and wellness precinct for senior including an aged care facility for 138 seniors consisting of 88 residential care beds and 50 apartments. This will undoubtedly result in a significant increase to the Currambine population, particularly for the senior demographic.

j) According to a *Macroplan Trade Area Analysis and Market Assessment of Sunlander Pharmacy* report prepared for the Applicant in July 2021:

- the resident population of the trade area for the Sunlander Pharmacy was estimated at 7,470 in mid 2021, and is projected to reach 8,120 by 2031, reflecting an average annual population growth rate of 0.9 per cent
- the average age of the trade area population is 35.5 years
- the majority of households are couples with dependent children (52.1 per cent) compared to the metropolitan benchmark of 47 per cent
- 8.5 per cent are single parent households compared to the metropolitan benchmark of 8.2 per cent
- the 0-14 age group accounts for an estimated 20.2 per cent of the population in the area which suggests that the community has a high number of dependent persons who are reliant on their caregivers to provide adequate healthcare, including provision of pharmaceutical benefits
- the median age at death for people in Currumbine – Kinross is 76 compared to the national median age of 81, with hospital admissions for renal dialysis relatively high in the area, as is the prevalence of osteoporosis
- there are nine pharmacies including the Joondalup Hospital pharmacy and 10 GP clinics within 5.8 km by road of the proposed premises

k) There are nine pharmacies including a hospital pharmacy within 1.3 km to 5.7 km by road from the proposed premises, the majority of which are separated from Currumbine by busy roads and highways making them difficult to travel to for seniors and young families, especially since 2.17 per cent of households in the trade region do not have a car and 24.22 per cent of households have access to only one car

l) It is in the public interest that people who visit the Centre and the Sunlander Dental Practice have access to pharmaceutical benefits in the location from which are receiving medical attention.

m) Unless the Applicant's request is approved:

- the Currumbine community will be left without reasonable access to pharmaceutical benefits
- the Currumbine community will continue to suffer from a lower than average age at death
- the health needs of the community particularly the needs of dependent children and retirees will be unaddressed and may decline resulting in an increased strain on the public health system

s38



s38

[REDACTED]

- b) The Applicant operates a non-PBS pharmacy within the proposed premises and has been the subject of at least one formal complaint regarding inappropriate conduct by supplying a pharmaceutical benefit from the subject premises and then claiming and processing the prescription at an approved pharmacy which is in contravention of the National Health Act.
- c) There is a proposed development of a supermarket and shops near the proposed premises. The development is discrete to the proposed premises, has not commenced, and does not and will not change anything in relation to the location rules services when needed.
- d) According to ABS 2016 Census data, Currambine is clearly unremarkable and at a higher socio-economic group, is highly mobile with 2.1 motor vehicles per dwelling and a higher than average use of public transport, meaning the majority of residents in the area have sufficient transport to access pharmaceutical benefits.
- e) There are no barriers such as lakes, rivers, mountains or other landscape or obstacle that creates any special circumstance in terms of easy accessibility to the nearest PBS provider. The Mitchell Freeway can be easily crossed over and the freeway in no way obstructs access to the nearest approved premises.
- f) The area is well provided with frequent public transport with both train and bus options allowing easy access to current approved pharmacies.
- g) The opening hours of the medical surgeries in Currambine and Kinross are generously covered by the local approved pharmacies. There is no great volume of GPs in the suburb or other unusual circumstance such as a public or private hospital which might create extraordinary situation in this area.
- h) Approval of the Applicant's request will impact the commercial viability of the existing approved pharmacies located immediately within the community and the further surrounding pharmacies, which is contrary to the public policy of the PBS as reflected in the Pharmacy Guild of Australia/Government agreements.
- i) It is not in the public interest to approve the request given the current provision of pharmaceutical services and the location of the current approved pharmacies in relation to the recognised business/commercial precinct in the Currambine area.

s38

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Correspondences:** The following correspondences in support of approval of the pharmacy were included with the request for approval (see **Attachment 2**):

- letter dated 15 August 2020 from Ian Goodenough MP, Federal Member for Moore
- letter dated 28 May 2021 from Mrs Trischa Botha, Liberal candidate for the Western Australia State Election 2021 and Secretary of the Arise Aboriginal and Torres Strait Islander Corporation.

Also included with the Applicant's request are 23 form letters from patients of the Sunlander Pharmacy, and a petition comprising approximately 853 paper based signatures in support of the proposed pharmacy (see **Attachment 2**). The Department notes some of the signatures on the petition are from people who reside outside the community, including Kinross residents. The Court has previously found that it is relevant to consider the existence of any community support, such as a petition, for the granting of approval, but that the presence of community support is not sufficient to meet the test of whether the granting of approval is in the public interest. Rather, it is necessary to consider whether granting approval would be in the public interest more generally.

**Material facts:** It is recommended you make the following findings of fact, based on the material in this Ministerial Submission, including the Department's research (**Attachment 6**):

The proposed premises are in Currambine, approximately 30 km north west of the Perth Central Business District.

- a) The Department's research found, according to data from the Australian Bureau of Statistics (ABS) 2016 Census data and ABS Quickstats, in 2016 in Currambine:
  - the resident population was 6,912, with an estimated resident population of 6,999 in 2021
  - 9 per cent of the population was 65 years and older, compared to 15.8 per cent of the Australian population
  - 96.2 per cent of households had access to at least one motor vehicle, higher than the 89.1 per cent of Australian households with motor vehicle access
  - the unemployment rate was 7.1 per cent, only slightly higher than the national unemployment rate of 6.9 per cent.
- b) The Department's research found the pharmacy is currently operating at the proposed premises (co-located with the Centre), without approval to supply pharmaceutical benefits, 8:30 am to 7 pm weekdays (Friday until 6 pm) and 8:30 am to 3 pm on Saturday (a total of 58 hours a week).

- c) The Department's research found the Centre is open 8 am to 7 pm weekdays and 8 am to 1 pm Saturday (a total of 60 hours per week) and offers general practice services by four advertised general practitioners, onsite pathology, onsite nurse, an aesthetic clinic, and an onsite psychologist. The Sunlander Dental Clinic is also co-located in the same building, and operates 8 am to 5 pm Monday to Saturday
- c) The Department's pharmacy approval data and research undertaken by the Department indicates there is one approved pharmacy in Currambine, located within approximately 3 km by road (5 minute drive) of the proposed premises in the Currambine Central Shopping Centre. The Shopping Centre has ample parking and offers a range of retail and essential facilities including but not limited to: Woolworths Supermarket, health and beauty; fashion; food and drinks.
- d) The Department's pharmacy approval data and research undertaken by the Department indicates there are 11 approved pharmacies located within approximately 6 km by road of the proposed premises, in Currambine (1), Kinross (2), Joondalup (7), and Iluka (1), five of which are located within approximately 3 km by road (5 minute drive) of the proposed premises which residents of Currambine and patients of the Centre, in need of pharmaceutical benefits, can access:
- SuperChem Kinross, approximately 1.3 km by road (3 minute drive) from the proposed premises, open 8 am - 8 pm daily (a total of 84 hours a week)
  - Kinross Pharmacy, approximately 1.8 km by road (3 minute drive) from the proposed premises, open 8:30 am - 6:30 pm weekdays, 8:30 am - 2 pm Saturday and 9 am - 1 pm Sunday (a total of 59.5 hours per week)
  - TerryWhite Chemmart Candlewood Village, approximately 2.7 km by road (5 minute drive) from the proposed premises, open 8 am - 8 pm daily (a total of 84 hours a week)
  - Currambine Pharmacy, approximately 3 km by road (5 minute drive) from the proposed premises, open 8 am - 8 pm weekdays, 8 am - 6 pm Saturday and 11 am - 5 pm Sunday (a total of 76 hours per week)
  - Iluka Plaza Pharmacy, approximately 3 km by road (5 minute drive) from the proposed premises, open 8.30 am - 6.30 pm weekday, 9 am - 5 pm Saturday and 9 am - 1 pm Sunday (a total of 62 hours per week).
- e) In addition, there is a 24 hour pharmacy located at the Joondalup Health Campus, approximately 4.2 km by road (8 minute drive) from the proposed premises.
- f) There are currently no shopping facilities nearby the proposed premises, unlike many of the approved pharmacies which are located nearby supermarkets.

The Department has prepared a map to provide a visual representation of the pharmacies, medical centres and supermarkets in the area surrounding the proposed premises (**Attachment 7**).

**Considerations:** It would be open to you to decide to approve the Applicant's request if you can be satisfied the Secretary's decision would result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist; and it is in the public interest to approve the Applicant.



### *Relevant community*

It is necessary you form an opinion as to a group of people which constitutes a community, as well as what level of access to pharmaceutical benefits you consider to be reasonable.

The Applicant claims the relevant community includes the patients attending the Medical Centre which is co-located with the proposed premises, the Dental Practice and the residents of Currambine who reside in the immediate area surrounding who require reasonable access to pharmaceutical benefits from the proposed premises.

The Department considers the relevant community is limited to the patients attending the Medical Centre and Dental Practice co-located with the proposed premises, given the current lack of shopping facilities nearby the proposed premises.

In assessing whether the request has reasonable prospects of meeting the criteria in subsection 90A(2) of the Act, it would be reasonable for you to consider whether not approving the proposed premises would leave this community without reasonable access to pharmaceutical benefits supplied by an approved pharmacist.

### **Recommendation:**

**Option 1 – Approve:** The Department believes it would be open to you to decide to approve the request (option 1) based on the following:

- you may consider that approval of the proposed premises will enhance the community's access to pharmaceutical benefits based on the fact the proposed premises is located with other health services
- you may consider it unreasonable for the patients of the Centre to travel between approximately 1.3 km and 6 km by road to the nearest approved pharmacies to access pharmaceutical benefits after their consultation at the Centre.

**Option 2 – Not approve:** The Department believes it would be open to you to decide not to approve the request (option 2) based on the following:

- the presence of 11 approved pharmacies within approximately 6 km by road of the proposed premises, is such that the community already has reasonable access to pharmaceutical benefits, particularly considering 96.2 per cent of Currambine households have access to a vehicle
- you may consider that the existing pharmacies provide reasonable access to pharmaceutical benefits, particularly as many open beyond the opening hours of the Centre, including the nearest approved pharmacy, SuperChem Kinross which opens extended hours from 8 am to 8 pm daily, and that there is a 24 hour pharmacy within approximately 4.2 km of the proposed premises
- you may consider the Applicant should wait until the planned development of the area nearby the proposed premises is complete, as they may then satisfy the criteria of the Pharmacy Location Rules
- there is no other compelling information before you to indicate it would be in the public interest to approve the Applicant.

**Attachments:**

**Attachment 1:** Summary of Ministerial discretion process and Location Rules

**Attachment 2:** The Applicant's request for approval

**Attachment 3:** Department's notice to the Applicant advising of your decision to consider the request

**Attachment 4:** Department's letters to the owner/s of the nearest approved pharmacies and responses

**Attachment 5:** Department's notice to the Applicant to offer natural justice to respond to third party comments, and the Applicant's response

**Attachment 6:** Department's research

**Attachment 7:** Map of proposed premises, nearest approved pharmacies, medical centres and supermarkets

**Sensitivities:** In total, since you became Minister for Health, you have received 133 valid requests to exercise your discretionary power. You have exercised your discretionary power to approve a pharmacy premises on 43 occasions and declined 78, with five withdrawn. There are currently seven pending.

**Consultation:** The Department invited comments from three nearby approved pharmacies in Currambine and Kinross. The Department did not invite comment from the Kinross Pharmacy as it is owned by the Applicant.

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