



SUBMISSIONS IN SUPPORT OF APPLICATION BWS - BEER WINE SPIRITS HAMMOND PARK

GRANT OF A LIQUOR STORE LICENCE

Date: 20 February 2025

KING&WOOD
MALLESONS



1	ABOUT THIS APPLICATION	3
2	SUMMARY OF THE s36B TEST	3
3	THE LOCALITY	3
4	LOCAL PACKAGED LIQUOR REQUIREMENTS	5
5	EXISTING PACKAGED LIQUOR PREMISES	7
6	REQUIREMENTS CANNOT REASONABLY BE MET	9
7	CONCLUSION	11
8	FURTHER INFORMATION	12

Cover page image credit: 'View of Eastern Elevation', Application for Development Approval dated 12 September 2023, Rowe Group

1 ABOUT THIS APPLICATION

- (a) Endeavour Group Limited (**Endeavour** or the **Applicant**) is applying for the grant of a liquor store licence for a new BWS liquor store (**Proposed Store**) to be located within the 'Hammond Park Neighbourhood Centre' which is to be constructed at 490 Wattleup Road, Hammond Park, Western Australia (**Centre**) (the **Application**). Further information on the Application is included in the Applicant's Public Interest Assessment (**PIA**).
- (b) Under section 36B of the *Liquor Control Act 1988* (WA) (**Act**), the Application cannot be granted unless the Licensing Authority is satisfied that the local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated¹ (the **s36B Test**).
- (c) These submissions (**Submissions**) are presented in support of the Application to demonstrate that the s36B Test is satisfied.

2 SUMMARY OF THE s36B TEST

- (a) The s36B Test applies to an application for the grant or removal of a hotel licence without restriction, a tavern licence, a liquor store licence or a special facility licence of a prescribed type.²
- (b) The Application is for the grant of a liquor store licence, therefore the s36B Test applies.
- (c) The Licensing Authority is not permitted to hear or determine an application to which the s36B test applies if the area of the retail section of the proposed licensed premises exceeds 400m² and there is another packaged liquor premises³ with a retail section greater than 400m² within the prescribed area.⁴
- (d) As the area of the Proposed Store's retail section will be less than 400m²,⁵ the Licensing Authority is permitted to hear the Application.
- (e) Section 36B(4) of the Act stipulates that:

The licensing authority must not grant an application to which this section applies unless satisfied that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated.
- (f) *Local packaged liquor requirements* are defined as 'the requirements of consumers for packaged liquor in the locality in which the proposed licensed premises are, or are to be, situated'.⁶
- (g) The Applicant submits that the Licensing Authority is permitted to grant the Application as the requirements of consumers for packaged liquor in the locality in which the Proposed Store is to be situated cannot be reasonably be met by the existing packaged liquor premises in the locality.

3 THE LOCALITY

- (a) The first step to determine if the s36B test is satisfied is to identify the locality in which the Proposed Store is to be situated. The term 'locality' is not defined in the Act.
- (b) The DLGSC Public Interest Assessment Policy states that the locality 'will be the area most likely to be affected by granting of an application in relation to amenity issues' and that

¹ The Act, s 36B(4).

² The Act, s 36B(2).

³ Packaged liquor premises means premises to which a hotel licence without restriction, a tavern licence, a liquor store licence or a special facility licence of a prescribed type relates. The Act, s 36B(1).

⁴ The Act, s 36B(3); *Liquor Control Regulations 1989* (WA), r 9AAA-9AAB.

⁵ See Applicant's PIA Annexure 1.

⁶ The Act, s 36B(1).

‘generally, the size of the locality will be that which is stipulated in “Specification of Locality”’.⁷

- (c) Following the guidance set out in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (**Liquorland Decision**), we consider that the relevant locality is the area outlined in the dashed red line in Figure 1 below (**Locality**) with the Proposed Store shown as a red dot.

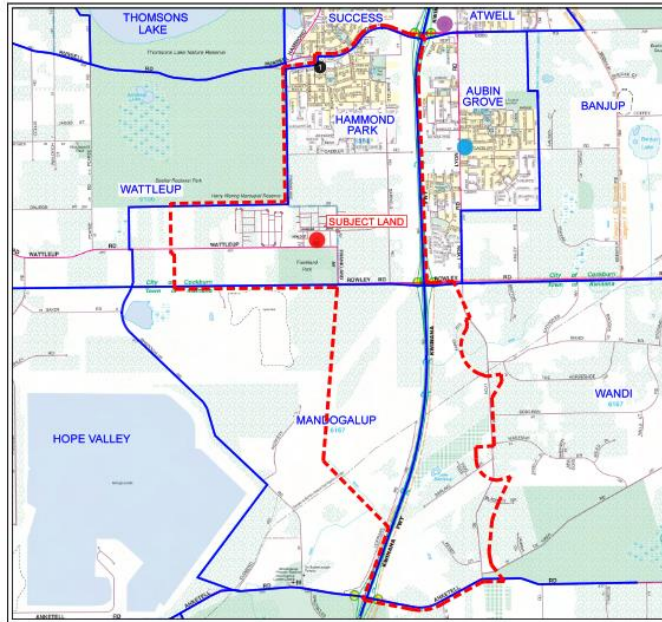


Figure 1: Locality for Proposed Store (red dotted line)

The DLGSC Public Interest Assessment Policy only discusses the definition of ‘locality’ with reference to the following factor set out in s 38(4)(b) of the Act that the Licensing Authority may take into consideration when determining if granting an application is in the public interest:

The impact on the amenity, quiet or good order of the locality in which the licensed premises, or proposed licensed premises are to be situated.

- (d) The Applicant submits that a 3 km locality is not suitable for this Application having regard to the Proposed Store’s intended nature of business, the retail catchment area, the topographical features that influence access to the Proposed Store and the residential density surrounding the Proposed Store.
- (e) The Liquorland Decision set out a number of relevant considerations for determining the “locality” for the purposes of section 36B(4):
- (i) it is the area that surrounds and is geographically close to, the location of the proposed premises;⁸
 - (ii) it does not equate to the area(s) from which consumers would come (i.e. the retail catchment area). However, the retail catchment area may be a relevant consideration for the purposes of determining locality;⁹
 - (iii) the shape and size of the locality may be influenced by topographical features (including man-made features such as roads) and the areas from which the proposed site could be accessed reasonably easily on foot or push bike. If there is a community in

⁷ DLGSC, *Public Interest Assessment Policy*, <https://www.dlgsc.wa.gov.au/departments/publications/publication/public-interest-assessment-policy>, accessed 22 March 2023.

⁸ *Liquorland Decision*, at [181].

⁹ *Ibid*, at [181], [183]-[184].

the area of the proposed sites, the geographical spread of the community may also influence the shape and size of the locality;¹⁰ and

- (iv) a specific test to be applied or an exhaustive list of the factors that will or may be relevant in the determination of the locality in any given case cannot be prescribed due to the variety of factual situations that may arise.¹¹
- (f) The Applicant engaged MGA Town Planners to identify, in its opinion, the Locality for the purposes of the Application, taking into account the relevant considerations for determining locality as set out in the Liquorland Decision as discussed above.
- (g) The Locality as determined by MGA Town Planners (as shown in Figure 1 above) takes in portions of the suburbs of Hammond Park, Mandogalup and Wandi.
- (h) The MGA Town Planners Report, provided as part of the Applicant's evidence, sets out the full reasoning for why this area should be considered the locality for the purposes of this Application. The reasoning set out in the MGA Town Planners Report supports the Applicant's submission that a 3 km locality is not suitable for this Application.
- (i) The Applicant submits that the Locality to be considered for the purposes of s36B is the same as the Locality to be considered for the purposes of s38(4)(b). Therefore, the Locality, as identified by MGA Town Planners, should also be applied for the purposes of assessing the impact on the amenity, quiet or good order of the locality when determining if granting the application is in the public interest. However, in respect of the Community Survey, the Applicant has also considered the specified locality size for Hammond Park, the suburb in which the Proposed Store will be located, being a 3 km radius of the Proposed Store, as shown in Figure 2 below (**3 km Area**).

4 LOCAL PACKAGED LIQUOR REQUIREMENTS

- (a) The second step to determine if the s36B test is satisfied is to identify the requirements of consumers for packaged liquor in the Locality.
- (b) The Liquorland Decision set out the following legal principles in relation to what may constitute 'requirements of consumers':
 - (i) it means what consumers demand or desire, as distinct from what they cannot manage without;¹²
 - (ii) it is not limited in its scope to the physical item or product of packaged liquor;¹³
 - (iii) matters such as product range, service and efficiency are relevant;¹⁴ and
 - (iv) matters such as shopper convenience and preference (including the convenience of one stop shopping) are relevant.¹⁵
- (c) The Applicant relies on its PIA in relation to general research regarding consumer requirements.

4.2 Community Survey

- (a) To gauge the local packaged liquor requirements and whether these requirements are being met, the Applicant engaged Painted Dog Research to conduct an online survey with residents of the Locality and surrounding areas, being the 3 km Area as shown below in Figure 2.

¹⁰ Ibid, at [185].

¹¹ Ibid, at [186].

¹² Liquorland Decision, at [79]. See also [89], Archer J determines that the word 'requirements of consumers' mean the same in s 36B(1) and s 5(1)(c) of the Act.

¹³ Ibid, at [108].

¹⁴ Ibid, at [106].

¹⁵ Ibid, at [79].

Participants within this area were categorised into 6 sub-areas within the radius as shown in Figure 2.



Figure 2: 3 km Area and associated categories

- (b) A total of 656 surveys were collected by Painted Dog Research within the 3 km Area between Monday 26 February 2024 and Sunday 17 March 2024.
- (c) All respondents were screened to ensure they were 18 years of age or over.
- (d) A wide range of age groups were interviewed with the gender divide being well balanced.
- (e) A wide range of household compositions were surveyed, the most common were single income, no kids (**SINKs**) and dual income, no kids (**DINKs**) households followed by young families. This is a fair reflection of the Locality based on the demographics of the area.
- (f) A full copy of the results is attached at Annexure 9 of the Applicant's PIA (**Community Survey**).

Current consumer behaviours

- (g) The Community Survey showed that currently:
 - (i) 93% of local residents report buying takeaway liquor, with just over half (53%) buying liquor once per fortnight and 30% of residents purchasing it at least weekly;
 - (ii) the most visited store is BWS Harvest Lakes followed by the Thirsty Camel drive-thru;
 - (iii) the most common reason for resident's current store preference is convenience (86%). Of that 86%, the most common preferences were that it is:
 - (A) close to home/work/it's local (50%); and
 - (B) close to frequented shops (21%).

Local consumer needs

- (h) The Community Survey showed that:
 - (i) although currently only 44% of residents regularly purchase liquor all in one shop, 60% would prefer to purchase liquor all in one shop in the future, making one-stop shopping the preferred method of purchasing liquor for the largest portion of the residents; and
 - (ii) 94% of residents say that being able to purchase liquor and groceries all in one shop from a liquor store located with a supermarket would make buying takeaway liquor more convenient for them.

- (i) Overall, the Community Survey showed that there is a requirement in the 3 km Area for the convenience of being close to home/work and being able to conduct one-stop shopping at liquor stores co-located with a grocery store:
 - (i) 93% said they had a deficiency of their current preferred store not being co-located with a supermarket or shopping centre;
 - (ii) 88% said buying liquor in one stop with groceries would be more convenient;
 - (iii) 87% said they feel the current stores do not satisfy their co-located liquor shopping needs; and
 - (iv) 84% said they would prefer to buy liquor in one stop with groceries.
- (j) The convenience of one-stop shopping has been accepted as a consumer requirement by the Licensing Authority¹⁶ and the WA Supreme Court.¹⁷
- (k) Residents who responded in the Community Survey also highlighted a number of features that they consider important for a liquor store. Some of the features residents considered to be most essential included:
 - (i) a safe environment to shop in (73% considered this to be absolutely essential, with 96% rating it as important);
 - (ii) availability of free on-site parking (74% considered this to be absolutely essential, with 95% rating it as important);
 - (iii) being easily accessible by car (61% considered this to be absolutely essential, with 95% rating it as important);
 - (iv) having access to a large range of brands, products and styles to choose from (74% considered this to be absolutely essential, with 95% rating it as important); and
 - (v) access to competitive pricing and weekly specials (62% considered this to be absolutely essential, with 95% rating it as important).
- (l) Although not as highly ranked as being ‘absolutely essential’, the following features were still considered important:
 - (i) a store that is well organised into section so you can easily browse for what you want (94%);
 - (ii) receiving high quality customer service (91%);
 - (iii) responsible service of liquor (91%);
 - (iv) the convenience of having a store near to where you live (90%); and
 - (v) a store that offers a range of highly rated, top-seller, trending and local favourite products (88%).
- (m) The features listed in paragraphs (k) and (l) above demonstrate the requirements residents have for packaged liquor.

5 EXISTING PACKAGED LIQUOR PREMISES

5.1 Other Packaged Liquor Stores within the Locality

- (a) The third step to determine if the s36B test is satisfied is to identify the existing packaged liquor premises in the Locality.

¹⁶ See for example: Decision of the Director of Liquor Licensing A000222902 [2017] at [12]; Liquorland Gateway [LC 07/2017] at 23; Liquorland Secret Harbour [LC 06/2017] at 61; Decision of the Director of Liquor Licensing A117210155 [2019] at 43(b)(v).

¹⁷ Liquorland Decision, at [79].

- (b) There are two existing licensed premises in the Locality that sell packaged liquor to the public, being the Thirsty Camel drive-thru (see section 5.2 below) and the new Cellarbrations liquor store (see section 5.3 below).
- (c) Only 7% of residents in the Community Survey results believe that there are sufficient or too many liquor outlets in the area already.

5.2 Thirsty Camel drive-thru Hammond Park

- (a) The Thirsty Camel drive-thru is located at 2 Macquarie Boulevard, Hammond Park within the Park Hive Shopping Centre precinct. The premises is a drive-through facility with two lanes passing by the front entry.
- (b) MGA Town Planners identified that the Thirsty Camel has a trade area of approximately 160 m², with a 80 m² cool room storing cartons of beer, premixed drinks, cider and other stock. The shop floor contains 8 fridges holding chilled wine, 4 fridges containing beer and cider and 6 fridges containing pre-mixed drinks. The western wall contains 5 glass cabinets holding spirits and half of the internal shop area contains a double-sided wine display. The Thirsty Camel does not offer the same range or prices as compared to a BWS. In addition, the Thirsty Camel is not co-located with a supermarket.
- (c) The Thirsty Camel is however located near an IGA supermarket (approximately 110 metres, on the other side of Macquarie Boulevard). This means that shoppers wanting to make combined grocery and packaged liquor purchases would likely need to make a second vehicle trip between the IGA and the Thirsty Camel. The grocery prices at an IGA supermarket are traditionally higher as compared to a Woolworths supermarket. In addition, the IGA supermarket is significantly smaller in size (approximately 600 m²) than the Woolworths adjoining the Proposed Store (3,740 m²), meaning that the product range offered at the IGA supermarket is far smaller than that offered at the Woolworths adjoining the Proposed Store. Shoppers would likely not purchase their complete grocery needs at the IGA and would still need to make another trip to another supermarket.
- (d) The Thirsty Camel is located approximately 1.8 km (straight line distance) and 2.4 km (shortest route by road) from the Proposed Store. The Thirsty Camel has a dedicated left turn access lane from Russell Road leading past the western side of the premises to the carpark servicing the liquor store and tavern. It is therefore accessible to commuters travelling west on Russell Road from the Kwinana Freeway. Otherwise, the Thirsty Camel services residents at the northern periphery of the Locality being the most accessible alternative for those residing at the southern edge of the suburb of Success and residents in the northern end of Hammond Park.



Figure 3: Thirsty Camel drive-thru Hammond Park

5.3 Cellarbrations liquor store Hammond Park

- (a) There is a recently granted liquor store licence for Cellarbrations at Shop 3, 1 Macquarie Boulevard, Hammond Park within the Park Hive Shopping Centre precinct.

- (b) We understand the trade area is approximately 80 m². The Cellarbrations store does not offer the same range or prices as compared to a BWS. The Cellarbrations store adjoins the IGA supermarket within the Park Hive Shopping Centre. As discussed above, the grocery prices at an IGA are traditionally higher as compared to a Woolworths supermarket and the IGA supermarket is significantly smaller in size as compared to the Woolworths adjoining the Proposed Store. This means that shoppers would still need to make another trip to another supermarket to complete their grocery shopping.
- (c) The Cellarbrations store is located approximately 1.8 km (straight line distance) and 2.5 km (shortest route by road) from the Proposed Store. The Cellarbrations store services residents at the northern periphery of the Locality being the most accessible alternative for those residing at the southern edge of the suburb of Success and residents in the northern end of Hammond Park.

5.4 Other Packaged Liquor Stores outside the Locality

- (a) The following licensed premises that sell packaged liquor are *outside* the Locality but within the 3 km Area of the Proposed Store:
 - (i) BWS Harvest Lakes; and
 - (ii) Aubin Grove Liquor (Bottlemart).

Both BWS Harvest Lakes and Aubin Grove Liquor (Bottlemart) are located on the other side of the Kwinana Freeway, making it highly inconvenient for residents who reside on the western side of Kwinana Freeway. BWS Harvest Lakes is approximately a 10 minute drive (4 km) from the Proposed Store while Aubin Grove Liquor (Bottlemart) is approximately a 9 minute drive (4-5km) from the Proposed Store.
- (b) The Community Survey refers to other packaged liquor stores however those liquor stores are located outside of the Locality and the 3 km Area.

6 REQUIREMENTS CANNOT REASONABLY BE MET

- (a) The final step to determine if the s36B test is satisfied is to determine whether the requirements of consumers for packaged liquor in the Locality cannot reasonably be met by the existing packaged liquor premises in the Locality.
- (b) As set out in the Liquorland Decision, ‘cannot reasonably be met’ means ‘cannot sensibly or rationally be met’.¹⁸ The Applicant does not have to show that the requirements of consumers cannot be met ‘without great or undue difficulty or inconvenience’.¹⁹
- (c) The Licensing Authority should also have regard to contemporary standards and expectations for the requirements of packaged liquor in determining whether consumer requirements cannot ‘reasonably’ be met.²⁰

6.2 Requirement: one-stop shopping

- (a) The Applicant notes the recent decision of *Endeavour Group Limited v Director of Liquor Licensing & Ors* (LC 07/2023) where the Commission held that, in that case, one-stop shopping does not automatically necessitate consumers being able to complete grocery and liquor shopping under “one roof” of a shopping centre, but rather “one trip” shopping for convenience.²¹ The Commission also held that “one stop shopping”:
 - “a. can include being able to undertake different aspects of grocery and packaged liquor (and possibly other) shopping by undertaking one trip from home;
 - b. may involve attending different “shops” contained in the same activity centre;

¹⁸ Liquorland Decision, at [131] and [134].

¹⁹ Ibid, at [121].

²⁰ Ibid, at [133].

²¹ At [210].

- c. *may require the use of more than one trolley; and/or*
 - d. *may involve a short walk or drive between shops and include the need to change parking places to conveniently get shopping to a vehicle.”*
- (b) The Applicant submits that this Application is distinguished from the case considered by the Commission in *Endeavour Group Limited v Director of Liquor Licensing & Ors* (LC 07/2023). The Locality for this Application is more densely populated than the locality considered in the Commission’s decision.²² The higher population and population density for the Locality in this Application results in busier roads and limited parking availability. In addition, the distance from Perth CBD to the Locality is much closer than the distance considered in the Commission’s decision. The residents of Hammond Park would therefore not expect to travel far to be able to purchase liquor or groceries. This means undertaking one trip from home with multiple stops or the need to change parking places is not as convenient for the residents in or around the Locality compared to the residents in or around the locality considered in the Commission’s decision.
- (c) The Applicant submits that in this case, one-stop shopping does necessitate consumers being able to complete grocery and liquor shopping under the one roof of a shopping centre.
- (d) The Community Survey showed that there is a requirement in the Locality and the 3 km Area for liquor stores to be co-located with a grocery store. The Community Survey also demonstrates that this requirement is not currently being met by the existing package liquor premises in or near the Locality or the 3 km Area. Despite 60% of residents preferring to purchase liquor all in one shop (being the most preferred method of purchasing among residents), only 44% of residents currently regularly purchase liquor all in one shop. This is likely due to the current lack of stores providing for this type of shopping and indicating a need for another liquor store co-located with a grocery store, as the Proposed Store would be. Further 22% of residents believe that a disadvantage of the existing liquor stores is that they are not conveniently located with a supermarket.
- (e) Nearly all residents who support the Proposed Store (93%) say a deficiency of their current preferred store is that it is not co-located with a supermarket or shopping centre.
- (f) The most preferred existing packaged liquor premises is *outside* the Locality, being BWS Harvest Lakes. 84% of residents who currently prefer to shop at BWS Harvest Lakes support the Proposed Store. This indicates that their needs are currently not being met by BWS Harvest Lakes.
- (g) The MGA Report also indicates that the population of the Locality is set to grow substantially in the suburbs of Hammond Park and Wandi and to a greater extent in the suburb of Mandogalup. As the population for the Locality increases, it is reasonable to presume that the need for one-stop shopping in the Locality will also substantially increase.
- (h) The Applicant submits that the requirement for one-stop shopping is not and cannot reasonably be met by the existing package liquor stores in the Locality or the 3 km Area. The Proposed Store would provide a further option for one-stop shopping for consumers in the Locality and the 3 km Area allowing this requirement to be better met now and in the future as the population increases.

6.3 Other requirements

- (a) Product range, parking, proximity to home, easy access and high quality customer service were all identified by residents as important requirements of a liquor store. The Community Survey shows that these requirements are not being met by the existing packaged liquor premises in the Locality or the 3 km Area. For example:

²² For example, the population of Falcon in the ABS 2021 Census was 5,531 and the population of Hammond Park in the ABS 2021 Census was 6,985.

- (i) 21% of residents cite small/limited product range as a limitation of their preferred store;
 - (ii) 11% cite limited range of craft, specialty, international, rare or premium products as a limitation of their preferred store;
 - (iii) 19% of residents cite higher prices/less competitive pricing as a limitation of their preferred store; and
 - (iv) 12% of residents cite limited or no parking as a limitation of their preferred store.
- (b) The Applicant submits that the requirements for product range, parking, proximity to home, and easy access are not being met by the existing packaged liquor premises in the Locality or in the 3 km Area.
 - (c) Although there may be some scope for the product range, availability of on-site parking and high level of customer service of the existing packaged liquor premises to improve, there is no guarantee that the existing packaged liquor premises will change their services to better meet these requirements. The product range of the existing packaged liquor premises will be limited by the brand of the premises as certain retailers will have agreements with liquor producers allowing them to exclusively stock certain products. As there are currently no existing packaged liquor premises in the Locality owned by Endeavour, the Proposed Store would introduce a range of approximately 700 products exclusive to their store. This would help to better meet the product range requirement for the Locality in a way that existing stores cannot.
 - (d) The Applicant submits that the requirements for one-stop shopping, product range, parking, proximity to home and easy access cannot reasonably be met by the existing packaged liquor premises in the same way that they can be met by the Proposed Store.

7 CONCLUSION

- (a) The Applicant submits that the above submissions have demonstrated that the local packaged liquor requirements are not currently being met and cannot reasonably be met by the existing packaged liquor premises in the Locality or in the 3 km Area.
- (b) The Applicant submits that the Licensing Authority should be satisfied that the s36B test is satisfied and that the Application should not be precluded from being granted due to the existing packaged liquor premises.

8 FURTHER INFORMATION

- (a) The Applicant reserves the right to supplement these submissions if required in order to satisfy the s36B Test. The Applicant would also welcome the opportunity to discuss this Application with the Licensing Authority if further information or further consideration of any aspect of this PIA is needed. The Applicant may be required to amend these submissions subject to any specific issues that are identified by the Licensing Authority or any interveners or objectors to this Application.
- (b) The contents of this publication are subject to copyright. It may not be reproduced, stored in a retrieval system or transmitted other than in connection with bona fide use by the parties and the Licensing Authority in the Application, without written permission. Enquiries should be addressed to Carl Black of King & Wood Mallesons, Level 30, 250 St Georges Terrace, Perth.

King & Wood Mallesons

Level 30
QV1 Building
250 St Georges Terrace
Perth WA 6000
Australia
T +61 8 9269 7000
F +61 8 9269 7999
DX 210 Perth
www.kwm.com