

**Liquor Commission of Western Australia**  
**(Liquor Control Act 1988)**

**Applicant:** Mr Benjamin Lawver  
*(self-represented)*

**Respondent:** Liquorland (Australia) Pty Ltd  
*(represented by Mr Stephen Standing as counsel and Ms Brigette McFarlane of Herbert Smith Freehills Kramer)*

**Commission:** Ms Emma Power (Chairperson)  
Mr Jared Brotherston (Member)  
Ms Shelley Davies (Member)

**Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* (the “Act”) for review of the decision of the Director of Liquor Licensing to conditionally grant the removal of a liquor store licence from premises known as Liquorland Hamilton Hill to premises known as Liquorland Hilton.

**Premises:** Liquorland Hilton, 285 South Street, Hilton, WA, 6163

**Date of Hearing:** 12 August 2024

**Date of Determination:** 31 March 2026

**Determination:** The Commission affirms the decision of the Director of Liquor licensing.

**Authorities referred to in determination:**

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (*Liquorland Karrinyup*)
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2024] WASC 128 (*Liquorland Southern River*)
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *O'Sullivan v Farrer* [1989] HCA 61
- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017)
- *Endeavour Group Limited v Commissioner of Police & Others* (LC 32/2022) (*BWS Kelmscott*)
- *Halsom Nominees v Winthrop Cellars* (unreported, WASC Full Court, 12 October 1994)
- *Liquorland v Hawkins* (1997) 16 WAR 325, 329

## BACKGROUND

1. On 30 November 2022, Liquorland (Australia) Pty Ltd (the **Respondent**), the licensee of the Liquorland Hamilton Hill liquor store located at 95 Forrest Road Hamilton Hill, applied to the Director of Liquor Licensing (the **Director**) under the provisions of sections 62 and 81 of the *Liquor Control Act 1988* (the **Act**) to remove the liquor store licence to the Hilton Shopping Centre located at 285 South Street, Hilton and rename the premises Liquorland Hilton (the **Premises**).
2. According to the Respondent, the Liquorland Hamilton Hill store is run down and in need of upgrading to meet contemporary requirements of consumers for liquor and related services. The proposed removal of the liquor store licence to the new Premises will be to a modern purpose-built premises designed to meet these contemporary requirements. The proposed new liquor store will represent a significant upgrade and improvement over the existing facility.
3. The liquor store licence will be relocated to a new shopping centre where it will be co-located with a new Coles supermarket. This will provide consumers with the convenience of purchasing packaged liquor in conjunction with doing their grocery shopping, at the most conveniently located full-scale supermarket in the locality.
4. In support of the application, the Respondent stated:

*'Evidence from Coles Liquor's State Manager, and from independent experts, uniformly confirms that the grant of the application would be consistent with contemporary standards, expectations and shopping habits, and planning objectives...Evidence supports the notorious fact consumers require convenience and 1 stop shopping, functions which are not represented in the locality'.*
5. Construction of the store is proposed to incorporate new best practice Crime Prevention Through Environmental Design criteria, which the Respondent maintains will confirm the security of the store and will sufficiently mitigate the risk of theft and antisocial behaviour. CCTV will be installed covering the entire store and will be maintained in accordance with the Director's Policy. Other proposed harm minimisation and safety measures include spirits to be locked behind closed doors and only accessible by staff with a key, bright lighting throughout the store, team members to wear security pendants to alert Police to threatening situations, and an offsite-monitored alarm system.
6. According to the Respondent, the new relocated liquor store will:
  - a) enhance shopper amenity by increasing convenience and meeting expectations for premium and local products;
  - b) improve safety for staff and shoppers, being located in a well activated, controlled environment with a layout incorporating the latest in modern design and best practice safety measures;
  - c) provide easy all weather access from undercover parking which may be of benefit to those with limited mobility or with accompanying young children; and
  - d) remove the licence from a residential area in close proximity to sensitive premises to a more appropriate commercial setting.

7. The Respondent also proposes to rebadge the premises to the Liquorland Black and White product range and theme, which has been *'designed to appeal to a more sophisticated clientele and deliver a more relevant, local range and position Liquorland as a local specialist'*, with an emphasis on local boutique gin suppliers, an expanded range of Australian wine, a focus on local WA craft beer, and an expanded range of vodka and gin RTDs and seltzers beyond the normal Liquorland product range of up to 1,800 stock lines.
8. The Respondent maintains its security and harm minimisation policies, house policies and management plans, advertising policies, responsible sale of alcohol promotion, CCTV, induction training and ongoing training will combine to effectively reduce the potential for the liquor store to have any negative impact on the locality. In the Respondent's view the net public benefit of the application and the control mechanisms to be incorporated outweigh any potential for adverse impacts.
9. On 16 February 2023, in accordance with sections 67 and 73 of the Act the Respondent advertised the application in accordance with the requirements of the Director.
10. Under the provisions of sections 72A, 73 and 74 of the Act, a total of 59 objections (the **Objectors**) and 70 submissions in opposition to the application were received from residents and other licensees.
11. All four grounds for objection under section 74(1) of the Act were nominated by the Objectors as applicable to this application. Their specific objections are summarised below:
  - a) the requirements of consumers for packaged liquor are already met by existing venues and a further large format liquor store is not needed in the locality;
  - b) the application is not in the public interest;
  - c) the relocation of the store will result in increased liquor thefts and resultant antisocial behaviour and crime in the locality, due to the Objectors' view that Liquorland is soft on crime, and they question the ability of Liquorland to prevent theft;
  - d) the new store will attract undesirable persons to the area who will commit these stated thefts and as a result antisocial behaviour will increase;
  - e) the perceived negative impact of the liquor store on their businesses (both liquor and non-liquor);
  - f) that increased harm will result from the grant of the application; and
  - g) assertions that the existing local liquor premises already meet the requirements of consumers, with one existing packaged liquor premises in close proximity to the proposed liquor store.
12. One of the Objectors, Giorgiana Pty Ltd, the licensee of the South Street Ale House, lodged further submissions in support of their objection:
  - a) The Respondent's evidence does not adequately address concerns held by the community of the potential for an increased level of harm and ill-health which may be caused by the proposed liquor store.

- b) The Respondent's evidence does not establish that the consumer requirements for packaged liquor and related services in the locality are not already adequately met by the existing packaged liquor outlets.
  - c) There is potential for increased petty theft and shoplifting in the locality as the Liquorland Hamilton Hill has an elevated and unusually high rate of theft currently, and that this elevated level of petty theft is likely to follow the Liquorland store to Hilton, a locality which exhibits hard-won improvements in amenity and reduction in antisocial behaviour.
13. Mr Benjamin Lawver (the **Applicant**) lodged further submissions in support of his objection:
- a) There is no requirement for an additional liquor store in the locality and granting the application will limit packaged liquor accessibility for residents of Hamilton Hill, thus creating hardship for them.
  - b) The Applicant questioned the validity of the community survey data which he considered was an attempt by the Respondent to hide the true evidence related to the new liquor store location.
  - c) The apparent relaxed attitude towards petty crime by Liquorland results in increased criminal activity and antisocial behaviour in the local community.
14. The Objectors contend that the public interest falls in favour of refusing the application.
15. On 17 January 2024, the Director granted the application for a conditional removal of the liquor store licence (the **Decision**), and imposed the following additional trading conditions on the licence in the public interest:
- a) all spirits must be displayed behind locked glass cabinets and accessible only by authorised staff; and
  - b) the licensee is to have and maintain a CCTV system in accordance with the policies of the Director.

## **APPLICATION FOR REVIEW**

16. On 4 March 2024 the Applicant applied, pursuant to section 25 of the Act, for a review of the Decision based on the following grounds:
- a) By deciding to deal with all objections received as a single objection, the Director diminished or dismissed the Applicant's evidence.
  - b) The Decision does not consider the impact the closure of the Hamilton Hill store would have on residents.
  - c) The Director accepted without question the result from a "controversial" intercept survey to justify the Respondent meeting their obligations under section 36B(4) of the Act.
  - d) When considering "one stop shopping" requirements, the Director erred by applying the standards for large regional or district shopping centres to a neighbourhood supermarket.

## APPLICANT'S SUBMISSIONS

17. The Applicant appeared in person at the hearing on 12 August 2024 and relied upon his filed written submissions together with oral submissions made at the hearing. The Applicant's submissions can be summarised as follows.
18. **Grouping of objections:** The Applicant contended that the Director erred in treating the 59 separate objections as a single objection for the purpose of making the Decision. The Applicant submitted that this approach effectively diminished the weight of the Objectors' collective evidence, and in particular obscured the specific and locally-grounded concerns he had raised. He submitted that each objection should have been considered on its individual merits and that this procedural approach constituted a failure to properly engage with the evidence before the Director.
19. **Impact on Hamilton Hill residents:** The Applicant submitted that the removal of the licence from Hamilton Hill would cause real and significant hardship to residents who currently rely upon the Liquorland Hamilton Hill store for their packaged liquor requirements. He submitted that the Director failed to properly weigh this adverse consequence against the claimed public benefit at the new location. In particular, the Applicant argued that the Respondent's own survey evidence showed that a number of existing customers would be sorry to see the store close and would likely shop elsewhere, which in the Applicant's view demonstrated an unmet residual need in Hamilton Hill. He further submitted that the ability to upgrade the existing premises was not contingent on moving the licence, and that the Respondent had not adequately explained why a refurbishment at the current location could not address identified shortcomings.
20. **Validity of the intercept survey:** The Applicant submitted that the McGregor Tan intercept survey conducted at the new Coles supermarket was "controversial" and should not have been accepted by the Director as sufficient evidence to satisfy the Consumer Requirements condition under section 36B(4) of the Act. In particular, the Applicant raised the following concerns:
  - a) The age profile of survey respondents (74% over 40 years old) was not consistent with the median age of 38 in the Hilton locality, suggesting the sample was not representative of the community;
  - b) 60% of respondents were female, which the Applicant submitted was not reflective of the broader community;
  - c) Many respondents did not live in the locality and therefore their preferences should carry less weight;
  - d) The results showed that only some proportion of consumers supported the proposed store, which fell short of establishing a community-wide consumer requirement; and
  - e) The Respondent had apparently conducted an earlier survey whose results were not provided to the Director or the Commission, leading the Applicant to infer that those earlier results did not support the application.
21. **One stop shopping and neighbourhood centres:** The Applicant submitted that the Director erred in applying the concept of "one stop shopping" as a consumer requirement in the

context of a small neighbourhood shopping centre containing a single full-service supermarket. He submitted that the cases establishing one stop shopping as a relevant consumer requirement — and in particular the observations of Buss JA in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 — were directed at large district and regional shopping centres, and that it was not appropriate to extend that reasoning to a neighbourhood centre of the type proposed. He submitted that applying the one stop shopping rationale to every new supermarket in the State would create a precedent under which liquor licences would be automatically available wherever a Coles or Woolworths was located.

22. **Existing stores:** The Applicant contended that the existing packaged liquor stores in the area — including the South Street Ale House (Cellarbrations Hilton), Liquor Barons White Gum Valley, and BWS Beaconsfield — were adequate to meet the consumer requirements of the locality and that no new or relocated licence was warranted. He noted that Cellarbrations Hilton is in particularly close proximity to the proposed new Premises.

## RESPONDENT'S SUBMISSIONS

23. The Respondent was represented by Mr Stephen Standing of counsel, instructed by Ms Brigette McFarlane of Herbert Smith Freehills, and relied upon primary and responsive written submissions, together with oral submissions made at the hearing. The Respondent's submissions can be summarised as follows.
24. **Nature of the application:** The Respondent emphasised that this application is for the *removal* of an existing licence, not the grant of a new licence. The effect of the application, if affirmed, would be to relocate business under an existing licence from a small, run-down, isolated neighbourhood centre in a predominantly residential area, to a modern, purpose-built premises co-located with a full-scale Coles supermarket in a vibrant commercial activity centre approximately 2 kilometres away. Customers currently served by the existing store would retain access to alternative packaged liquor outlets close to the existing location.
25. **Procedural grounds (grouping of objections):** The Respondent submitted that the Director's decision to treat the 59 objections as one objection was expressly contemplated by section 74(4) of the Act, which permits the Director to decline to hear objections that are repetitious of other objections. The Respondent submitted that the Commission, in conducting its review, is in any event required to undertake a fresh merits review on the same materials, and that whether or not the Director made a particular procedural decision is not determinative. The Commission's task under section 25 of the Act is to make its own determination on the merits: *Hancock v Executive Director of Public Health* [2008] WASC 224, [53]–[54].
26. **Public interest — general:** The Respondent submitted that the expression "public interest" in section 38(2) of the Act imports a discretionary value judgment, confined by the positive indications in the statute and the scope and purposes of the Act: *O'Sullivan v Farrer* [1989] HCA 61. When the evidence gives rise to tension between competing objects of the Act, the competing interests and evidence must be weighed and balanced. The Respondent submitted that in this case, however, there is little or no such tension. The weight of credible, independent expert and consumer evidence strongly supports the grant of the application.
27. **Public interest — consumer requirements and convenience:** One of the primary objects of the Act is to cater for the requirements of consumers for liquor and related services: section 5(1)(c). The Respondent submitted that convenience, including the convenience of one stop

shopping for groceries and packaged liquor in conjunction, is both a relevant consumer requirement and a notorious fact of contemporary Australian life: *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, [78], [84]. This is not limited to large district or regional shopping centres. The Respondent referred to:

- a) *BWS Kelmscott* (LC 32/2022), [153], where this Commission held that one stop shopping is a matter of degree, the essence of which is convenience marked by the ability to easily visit multiple shops in close proximity without the need to make a second trip in a vehicle, including the ability to visit multiple shops using a single trolley;
- b) *Liquorland Karrinyup* [2021] WASC 366, [41], [79] and [84], where Archer J confirmed that the convenience of one stop shopping can be a relevant consumer requirement without any qualification limiting it to large suburban shopping centres; and
- c) *Halson Nominees v Winthrop Cellars* (1994), where Rowland J described one stop shopping as a situation where a substantial section of the public would find it convenient to do their weekly or other shopping at one shopping centre.

28. **Intercept survey:** The Respondent submitted that the McGregor Tan survey of 185 randomly selected Coles customers conducted on 15 and 16 June 2023 was reliable, cogent and properly conducted evidence of consumer requirements. Key results included that 93% of respondents were purchasers of takeaway liquor, 84% indicated they would purchase liquor from the new Premises (59% at least monthly), and that convenience and one stop shopping were the key factors identified by more than 75% of respondents. The Respondent submitted that surveys are considered as part of the whole of evidence and that it is not necessary for a survey to establish 100% community support; it is sufficient that a significant portion of consumers have the relevant requirement: *Liquorland Southern River* [2024] WASC 128, [132]–[136]. The concerns raised by the Applicant about the age and gender profile of respondents did not undermine the survey's value. The non-provision of earlier survey material was not indicative of bad faith; a party is entitled to present the evidence it considers most probative.
29. **Consumer Requirements condition — section 36B(4):** The Respondent submitted that the Director correctly found that the Consumer Requirements condition was satisfied. The existing packaged liquor outlets in the locality — Cellarbrations Hilton (a small, predominantly drive-through facility of approximately 60sqm), Liquor Barons White Gum Valley (an access-constrained standalone drive-through with limited parking), and BWS Beaconsfield (a convenience store with significant gradient separation from its anchor grocer) — are incapable of offering one stop shopping in conjunction with a full-scale supermarket in a manner consistent with contemporary standards and expectations. The Respondent referred to *Liquorland Southern River* [2024] WASC 128 for the proposition that a consumer requirement need not be "considerable" and that there is no de minimis threshold: at [132]–[139]. The Respondent also relied upon this Commission's decision in *BWS Kelmscott* as authority for the proposition that the one stop shopping requirement is assessed by reference to practical access and convenience, not merely geographic proximity.
30. **Harm and antisocial behaviour:** The Respondent submitted that the Objectors' concerns about increased theft and antisocial behaviour were speculative and unsupported by probative evidence. The Respondent's evidence, including from consultants Bodhi Alliance, established that the new Premises are designed to Crime Prevention Through Environmental

Design (CPTED) standards, that the internal (non-street-facing) configuration would reduce opportunistic theft, and that Coles Liquor has a proven record of cooperating with Police on crime prevention. The Respondent submitted that the Liquorland policy of not requiring staff to physically confront thieves is a staff safety measure, not evidence of a permissive attitude toward crime, and is consistent with accepted retail practice.

31. **Impact on Hamilton Hill residents:** The Respondent submitted that the Applicant's concerns about hardship to Hamilton Hill residents were not made out on the evidence. Customers at the existing premises who choose not to travel to the new Premises (approximately 2km) would retain access to alternative packaged liquor stores within a short drive or walk of their homes, including stores identified by the Applicant himself as being less than 1.5km from the existing premises. A further drive of 1.5 to 2km to obtain packaged liquor does not constitute significant hardship within the meaning of the Act. The question under section 36B(4) and the public interest test is not whether equity as between suburbs can be achieved, but whether consumer requirements in the *relevant locality* are being met.
32. **Weighing of public interest:** The Respondent submitted that the overall balance of public interest considerations strongly favours the grant of the application. The relocated Premises would represent a substantial amenity improvement, move the licence away from a predominantly residential area with sensitive premises (including a CARE school for at-risk youth) to a well-activated commercial precinct, provide improved consumer access, increase staff and consumer safety, and align the licence location with contemporary planning policy and consumer expectations.

## LEGAL AND STATUTORY FRAMEWORK

33. The Commission is not constrained by a finding of error on the part of the Director but is to undertake a full review and make a determination on the basis of the same materials that were before the Director (*Hancock v Executive Director of Public Health* [2008] WASC 224, [54]; section 25(2c) of the Act).
34. On review pursuant to section 25 of the Act, the Commission may:
  - a) affirm, vary or quash the decision of the Director (section 25(4)(a));
  - b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance (section 25(4)(b));
  - c) give directions as to any questions of law reviewed, or to the Director, to which effect shall be given (section 25(4)(c)); and
  - d) make any incidental order (section 25(4)(d)).
35. When conducting a review, the Commission:
  - a) may make its determination on the balance of probabilities (section 16(1)(b)(ii));
  - b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply (section 16(7)(a));

- c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms (section 16(7)(b)); and
  - d) is to act speedily and with as little formality and technicality as is practicable (section 16(7)(c)).
36. The failure to refer to any specific evidence in written reasons does not mean that the evidence has not been considered (*Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017)).
37. Pursuant to section 73(10) of the Act, an objector bears the burden of establishing the validity of the objection. Pursuant to section 74(1) of the Act, such objection can only be made on the grounds that:
- a) the grant of the application would not be in the public interest; or
  - b) the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or
  - c) that if the application were granted, undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur, or the amenity, quiet or good order of the locality would in some other manner be lessened; or
  - d) that the grant of the application would otherwise be contrary to the Act.
38. The Commission is obliged to determine the Application by reference to the issues which arise from the Application in the context of the relevant provisions of the Act, the evidence (including notorious facts) before the Commission and any submissions made by the Applicant and the Respondent (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, [55] (Buss JA)).
39. In addition, the Director is obliged to comply with the requirements of procedural fairness when exercising the powers conferred by the Act (*Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356).
40. As explained in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (*Liquorland Karrinyup*) at [2], an applicant for a liquor store licence must satisfy the licensing authority of two things:
- a) 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 (the **Consumer Requirements condition**); and
  - b) that the grant of the application is in the public interest (the **Public Interest condition**).

### **Consumer Requirements condition**

41. The Consumer Requirements condition is imposed by section 36B(4) of the Act, which provides:

*"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."*

42. The provisions of section 36B(4) of the Act apply to an application for the removal of a liquor store licence (section 36B(1)(b) and (2)(c) of the Act).
43. Section 36B(4) was considered at length in *Liquorland Karrinyup*. Justice Archer found that its purpose was to ensure that an additional licence would only be granted where consumer requirements could not reasonably be met by the existing premises (*Liquorland Karrinyup* [74]).
44. To apply the test, the Commission is required to consider whether, having regard to the objects of the Act that arise on the evidence or by notorious fact (including the object of catering 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), it is satisfied that the requirements of consumers for packaged liquor in the relevant locality cannot reasonably be met by existing packaged liquor premises in that locality (*Liquorland Karrinyup* [101]).
45. The test is objective and requires the Commission to be satisfied that the requirements of consumers for packaged liquor in the locality cannot sensibly or rationally be met by existing premises (*Liquorland Karrinyup* [104], [131], [134]).
46. Consideration of 'requirements of consumers for packaged liquor' in section 36B(1) allows consideration of the same types of matters as are relevant to section 5(1)(c) of the Act (*Liquorland Karrinyup* [89], [102]). Relevant matters are not limited to the physical item or product of packaged liquor and can include convenience, product range, service and efficiency (*Liquorland Karrinyup* [106], [108]).
47. The term 'locality' in section 36B(4) connotes the concept of neighbourhood, and denotes an area that surrounds, and is geographically close to, the location of the proposed premises, rather than the area(s) from which consumers would come, and to which the retail catchment area can be a relevant consideration (*Liquorland Karrinyup* [181], [182], [188]).
48. Justice Archer also explained that the shape and size of a 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 the area of the proposed site, the geographical spread of that community may also influence the shape and size of the locality (*Liquorland Karrinyup* [185]).
49. Importantly, the Court in *Liquorland Southern River* [2024] WASC 128 confirmed that there is no de minimis threshold for the establishment of a consumer requirement for the purposes of section 36B(4), though a relatively minor requirement is a factor that might warrant refusal in the public interest under sections 33 or 38: at [132]–[136]. The Court also confirmed that section 36B(4) does not require an applicant to show a 'considerable' consumer requirement: at [137], [139].

## Public Interest condition

50. The term "public interest" is not defined in the Act. Nor does the Act expressly state the nature of the factors to be considered by the Commission in determining whether an application is in the public interest.
51. The term "public interest" is defined in the Macquarie Dictionary as "the benefit or advantage to a whole community", as opposed to the individual. It directs attention to that conclusion or determination which best serves the advancement of the interests or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.
52. Further, the expression 'in the public interest', when used in a statute, imports a discretionary value judgment (*O'Sullivan v Farrer* [1989] HCA 61).
53. When determining whether an application is in the public interest, the Commission **must** take into account the primary and secondary objects of the Act set out in sections 5(1) and 5(2).
54. Section 38(4) provides that the matters the licensing authority **may** have regard to in determining whether granting an application is in the public interest include the harm or ill-health that might be caused to people due to the use of liquor; the impact on the amenity of the locality; and whether offence, annoyance, disturbance or inconvenience might be caused to persons who reside or work in the vicinity.
55. The Public Interest condition requires the Commission to consider the positive and negative aspects of the Application and how the Application will promote the objects of the Act (*Liquorland Karrinyup* [31]).
56. Determining the public interest is a discretionary value judgment to be made having regard to the objects of the Act (*Liquorland Karrinyup* [34], [105]; *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 [48] (Buss JA)). In exercising its broad discretion, it is for the Commission to decide what weight it will give to the competing interests and other relevant considerations under the Act (*Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356 [37]; *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 [36]).
57. There are two stages in determining whether the grant of an application is in the public interest: first, the Commission must evaluate the evidence and make findings and draw conclusions from the evidence; and second it must apply the public interest criterion to the relevant circumstances (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 [55]; *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 [41], [42]).

## DETERMINATION

58. It is first important to note that the relevant original application was to move an existing licensed premises from one location to another within a relatively small geographic area. The Commission is not considering the grant of a new licence or whether additional liquor licences are generally desirable in this locality. That distinction is material to the proper approach to both the Consumer Requirements condition and the public interest assessment.

59. In conducting this review, the Commission has considered all materials that were before the Director, including:
- a) a number of submissions in opposition to the application; and
  - b) 59 notices of objection, which were lodged by residents and other licensees (including the Applicant).
60. The objections are similar in nature and are largely covered by the following points:
- a) the requirements of consumers for packaged liquor are already met by existing venues and a further large format liquor store is not needed in the locality;
  - b) the application is not in the public interest;
  - c) the relocation of the store will result in increased liquor thefts and resultant antisocial behaviour and crime in the locality, due to the Objectors' view that Liquorland is soft on crime, and they question the ability of Liquorland to prevent theft;
  - d) the new store will attract undesirable persons to the area who will commit these stated thefts and as a result antisocial behaviour will increase;
  - e) the perceived negative impact of the liquor store on their businesses (both liquor and non-liquor);
  - f) that increased harm will result from the grant of the application; and
  - g) that the existing local liquor premises already meet the requirements of consumers, with one existing packaged liquor premises in close proximity to the proposed liquor store.

### **Procedural Grounds**

61. The Commission comments that the fact that the Director took the objections to the original application to be one objection does not mean that the objections were not all carefully considered. The Act simply allows the Director to "group" objections of a similar type for administrative ease, as expressly contemplated by section 74(4). This does not discount the time and effort Objectors went to in order to file their objections. However, the Director and Commission ultimately must weigh the evidence in order to make a final decision.
62. Further, the Commission has conducted its own fresh review of all materials before the Director. Whether or not the Director's approach to grouping objections constituted a procedural shortcoming is therefore not determinative of this review. The Commission's obligation is to examine the merits on the available materials: *Hancock* at [53]–[54].
63. Further, the fact that the Commission has not referred to each objection individually or any specific piece of evidence does not mean that the Commission has not taken the same into account in this decision. However, in this determination the Commission has particularly and specifically addressed the Applicant's main issues and arguments.

## One Stop Shopping

64. The Commission generally agrees with the Applicant's submission that it is not necessarily preferable, as a matter of policy, for a packaged liquor store to be contained in every single shopping centre in the State.
65. However, it is not the purpose of section 36B(4) of the Act to limit the number of packaged liquor outlets to some arbitrary number. The Act requires the decision maker to only grant another licence or the removal of a licence into a locality upon being satisfied a consumer requirement is not being met in that locality.
66. The Commission confirms that the issue of one stop shopping can apply equally to a standalone small development (such as is considered here) or a very large shopping centre (such as Karrinyup). This position has been consistently confirmed in this Commission's decisions in *BWS Kelmscott* (LC 32/2022) and has the clear support of the Full Court in *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227 and of Archer J in *Liquorland Karrinyup* [2021] WASC 366. The Commission in *BWS Kelmscott* at [153] confirmed that the essence of one stop shopping is convenience — marked by the ability to easily visit multiple shops in close proximity without the need to make a second trip in a vehicle, including via a single trolley. That principle applies with equal force whether the anchor shopping facility is a regional centre or a neighbourhood supermarket.
67. It is an established and notorious fact that one stop shopping, particularly linked to full-scale grocery shopping, is a matter of importance to the general public. That notorious fact is not confined to large suburban shopping centres: *Liquorland v Hawkins* (1997) 16 WAR 325, 329 (Ipp J). The Applicant's submission that the one stop shopping rationale should not apply to neighbourhood-scale supermarkets is inconsistent with those authorities and is rejected.
68. As to whether the intercept survey is sufficient to establish a consumer requirement, the Applicant and Objectors raised concerns as to the validity of the survey. The Commission makes the following observations:
  - a) Even though the median age of Hilton is 38, and 74% of respondents sampled were over 40 years old, the median age takes into account minors who would not be independently shopping nor be approached for a survey. The Commission does not consider the age profile of respondents to be a material deficiency in the survey.
  - b) The fact that 60% of respondents were female only reflects that shopping is traditionally a female-led activity, not that the survey is not reflective of the community.
  - c) Not all parties visiting the locality need to live in the locality; it is sufficient that they are visitors who resort to the locality for the relevant purpose.
  - d) It is not necessary that there be 100% support for the proposed store to find that there is some consumer requirement for the same; *Liquorland Southern River* [2024] WASC 128, [132]–[136].
  - e) It is usual for any survey results to be presented in a manner that is most positive for the party presenting the survey. This is taken into account by the Director and the Commission.

69. Surveys are taken as part of the whole of evidence provided, and not relied upon in their totality. A survey is one way of sampling local opinion.
70. The Commission further comments that it is typical in these types of applications for surveys to be undertaken on more than one occasion. The Applicant has extrapolated that the reason the initial survey results were not provided was that the same must not support the grant of the licence. However, this is mere speculation. As a proposed development progresses it is possible to provide a more targeted and accurate survey, and it is standard for surveys to be undertaken multiple times with different or refined content. Liquorland is entitled to present to the licensing authority what evidence it wishes to support its application. The fact it does not choose to present everything is not necessarily indicative of acting in bad faith or attempting to hide results.
71. In this case, it was argued by the Objectors and the Applicant that the current packaged liquor stores in the Hilton area — being South Street Ale House (Cellarbrations Hilton), Liquor Barons White Gum Valley, and BWS Beaconsfield — were sufficient to meet the need for "one stop shopping". After review, the Commission does not find that this is the case.
72. Although it would be technically possible for a customer to move between Cellarbrations and the proposed Coles, the same would be difficult and not conducive to easy access or browsing. Further, Cellarbrations, given its nature as predominantly a drive-through facility of approximately 60sqm, does not have the same scale of stock or range of product as would be provided at the Liquorland Hilton. That conclusion is consistent with the approach taken by this Commission in *BWS Kelmscott* [153] regarding the significance of practical, trolley-accessible connectivity between grocery and liquor premises. The separation between Cellarbrations (located at the rear of the South Street Ale House, accessed via Paget Street) and the entrance to the new Coles supermarket means that a combined one-trolley shopping experience is not practically achievable.
73. Access via the precinct is further considered in the context of the proposed Centre. The new Premises will share an undercover carpark with the Coles supermarket, with traveller access. The entrance to the new Premises will be internal and will share the airconditioned lobby with the supermarket and café. This configuration provides the hallmark of genuine one stop shopping convenience that *BWS Kelmscott* described: park once, use a single trolley, and access both grocery and liquor purchases without a second vehicle trip or outdoor transit across a road.
74. The Coles supermarket at the Centre is the most accessible full-scale supermarket for residents in the locality and the surrounding area south of the locality, including those in the vicinity of the existing Hamilton Hill premises. MGA's evidence establishes that the Centre is expected to attract over 720,000 visits per year, and the new Premises around 70,000 visits per year. These are substantial numbers that support the inference that there is a genuine and significant consumer requirement at the proposed location.
75. In terms of the legislative operation of section 36B(4), the Commission is satisfied, having regard to the evidence as a whole and to the notorious fact of the importance of one stop shopping in contemporary Australian life, that the relevant local packaged liquor requirements cannot reasonably be met by the existing packaged liquor premises in the locality. Cellarbrations Hilton, BWS Beaconsfield, and Liquor Barons White Gum Valley, whether considered individually or collectively, do not provide, and cannot sensibly or rationally

provide, the opportunity for one stop grocery and liquor shopping in conjunction with the new full-scale Coles supermarket at the Centre. The Consumer Requirements condition under section 36B(4) is satisfied.

### **Negative Effects on the Area**

76. The Commission has reviewed the objections and Liquorland's proposed control mechanisms and notes that Liquorland is a very experienced packaged liquor licensee. Given that the new Premises is modern and purpose built, the Commission finds that the same is an upgrade to the prior facility and will be better suited to address the concerns of Objectors as to theft and antisocial behaviour in the locality, as well as other perceived negative impacts.
77. The issue of the Respondent's corporate policy of staff not physically confronting thieves should not be confused with encouragement of theft, but rather reflects a legitimate safety concern for staff. The evidence establishes that Coles Liquor employs a range of alternative deterrent and detection measures including CPTED store design, CCTV, staff security pendants, spirits displayed behind locked cabinets, and close cooperation with Police. The Commission finds that the concerns raised by Objectors about crime are largely speculative and unsupported by probative evidence. The Commission accepts the evidence of the Respondent's expert consultants that the new Premises will, in all likelihood, result in *reduced* theft incidents compared to the existing store, owing to the modern design, internal configuration, and site activation.
78. The Commission further notes that the existing Liquorland Hamilton Hill premises is located in close proximity to sensitive premises, including the Port School (a CARE school for at-risk youth). The relocation of the Premises to a commercial activity centre on South Street, and away from a predominantly residential neighbourhood containing such sensitive premises, is a positive outcome from the perspective of harm minimisation — one of the primary objects of the Act under section 5(1)(b).

### **Negative Impact on Removal**

79. The Applicant made various submissions on the impact of the removal of the liquor store licence from Hamilton Hill, in particular being:
  - a) that the ability to upgrade the premises is not contingent on moving the premises; and
  - b) the results of Liquorland's own survey of customers at the existing premises; and
  - c) inconvenience to local residents.
80. The application at hand is not to upgrade existing premises. It is to move the licence. As such, comments as to what "might" be commercially negotiated at the current location are speculative and not relevant to the current decision.
81. The fact that the survey results reflect that some parties would be sorry to see the current location shut, or would likely shop at different stores, is not definitive evidence that it is not in the public interest to grant the application. On the contrary, the evidence from the same survey indicated that many existing customers understood and accepted the benefits of the relocation, including improved convenience, reduced theft, and the ability to purchase grocery and liquor in one trip.

82. The Commission further does not consider that a further drive of 1.5km to 2km to obtain packaged liquor constitutes "significant hardship" as alleged. Moreover, the Applicant himself identified at least two packaged liquor stores within a 3-minute drive and less than 1.5km of the existing premises, so Hamilton Hill residents will not be left without accessible options for the purchase of packaged liquor.
83. Further, it is not within the scope of the Act to make a decision about what is "equitable" in respect of the distribution of liquor stores between suburbs or localities. Rather, the consideration is whether any removal or grant is in the public interest and whether the provisions of section 36B(4) can be satisfied. Both those tests are met in this case.

### **Public Interest — Weighing of Evidence**

84. The Commission finds that the overall balance of public interest considerations strongly favours the affirming of the Director's Decision. The Respondent has adduced credible, cogent, and independent evidence — both from consumers and from expert consultants — in support of the grant of the application. The Applicant and the Objectors have not advanced probative evidence sufficient to discharge the burden under section 73(10) of the Act.
85. The positive factors supporting the grant are numerous and weighty:
- a) strong consumer demand for the services to be provided at the new Premises, evidenced by the McGregor Tan survey (84% of Coles customers indicating they would purchase from the new Premises);
  - b) the satisfaction of a genuine and currently unmet requirement for one stop grocery and liquor shopping in the locality;
  - c) significant improvements in shopper amenity, staff and consumer safety, and accessibility at the new Premises;
  - d) removal of the licence from a predominantly residential area with sensitive premises to an appropriate commercial setting, consistent with State planning objectives; and
  - e) likely reduction in, rather than increase in, theft and antisocial behaviour as a result of the modern, internally-configured, and CPTED-compliant design.
86. The negative factors alleged by the Applicant and Objectors — particularly concerns about crime, harm, and inconvenience to Hamilton Hill residents — are either speculative, insufficiently substantiated by probative evidence, or, upon proper analysis, not of sufficient weight to outweigh the substantial public benefits identified above.
87. The Commission finds that the Applicant has not established the validity of his objection under section 73(10) of the Act, and that the Director was correct to grant the application. The Commission affirms the Decision of the Director.

## FINDINGS AND ORDERS

88. The Commission finds:

- a) The Consumer Requirements condition under section 36B(4) of the Act is satisfied. The existing packaged liquor premises in the new locality of Hilton cannot reasonably meet the local packaged liquor requirements of consumers, including in particular the requirement for one stop grocery and liquor shopping in conjunction with the new full-scale Coles supermarket at the Centre.
- b) The Public Interest condition is satisfied. The grant of the conditional removal of the liquor store licence from 95 Forrest Road, Hamilton Hill to 285 South Street, Hilton is in the public interest, having regard to the objects of the Act and the evidence before the Commission.
- c) The Applicant has not discharged the burden of establishing the validity of his objection under section 73(10) of the Act.
- d) The Decision of the Director of Liquor Licensing dated 17 January 2024 to conditionally grant the removal of the liquor store licence is affirmed.

89. The Commission affirms the following conditions imposed by the Director on the licence in the public interest:

- a) all spirits must be displayed behind locked glass cabinets and accessible only by authorised staff; and
- b) the licensee is to have and maintain a CCTV system in accordance with the policies of the Director.

  
EMMA POWER  
CHAIRPERSON

  
JARED BROTHERSTON  
MEMBER

  
SHELLEY DAVIES  
MEMBER