



Bhutan Liquor Store

83B Main Street, Osborne Park WA

Application for the Conditional Grant
of a Liquor Store Licence



Section 38 - Public Interest Assessment
(including Section 36B submissions)

October 2024

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1. Introduction

- 1.1. Druksell Australia Pty Ltd is applying to the Licensing Authority for the conditional grant of a liquor store licence for premises located at 83B Main Street, Osborne Park WA.
- 1.2. The subject premises currently contains a Bhutanese grocery store, which is now in its second year of operations. The proposed liquor store will be located within that store and operated by a director of the applicant company - Kunzang Wangdi.
- 1.3. The proposed liquor store will meet the local community requirements in terms of Bhutanese packaged liquor supply. Further, the shop's niche offering of packaged liquor will appeal far and wide to the Bhutanese community that exists both inside and outside of the locality.
- 1.4. All of this will be discussed in detail in later sections of these submissions.
- 1.5. In the Director's Decision in respect of an application for the conditional grant of a liquor store licence dated 4th March 2020 for Hangawee Outlet Northbridge (attachment BS01), the Director's Delegate, Peter Minchin stated the following:
 - 1.5.1. *"In addition to the normal administrative requirements, applicants for the grant of a new liquor store licence have two very distinct obligations under the Act which must be discharged before the application can be approved. This first is overcoming the restraint imposed by s 36B and second, by demonstrating that the grant of the licence is in the public interest as required under s 38(2)."*
- 1.6. These submissions are designed to address:
 - 1.6.1. The restrictions on the grant of certain licences authorising the sale of packaged liquor as set out in Section 36B of the Liquor Control Act 1988 and the (WA) (the "Act"), and
 - 1.6.2. The public interest requirements as set out in Section 38(2) of the Act.
- 1.7. These submissions have been drafted by Canford Hospitality Consultants Pty Ltd in consultation with Mr. Wangdi of Druksell Australia Pty Ltd, and references to the applicant or the applicant's opinion relate to Mr. Wangdi.
- 1.8. Section 38(2) of the Liquor Control Act 1988 sets out the matters which may be considered by the Licensing Authority in deciding whether or not the grant a liquor licence is in the public interest. Specifically, it states:
 - 1.8.1. *"An applicant who makes an application to which this subsection applies must satisfy the licensing authority that granting the application is in the public interest"*.
- 1.9. Section 38(4) of the Liquor Control Act 1988 states the licensing authority may have regard to the following matters when considering an application for a liquor licence;

- 1.9.1. *“the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and*
 - 1.9.2. *whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened; and*
 - 1.9.3. *whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and*
 - 1.9.4. *any effect the granting of the application might have in relation to tourism, or community or cultural matters; and*
 - 1.9.5. *any other prescribed matter”.*
- 1.10. Section 36B(2) of the Liquor Control Act 1988 states:
- 1.10.1. *“This section applies to an application for the grant or removal of any of the following licences -*
 - 1.10.1.1. *(a) a hotel licence without restriction;*
 - 1.10.1.2. *(b) a tavern licence;*
 - 1.10.1.3. *(c) a liquor store licence;*
 - 1.10.1.4. *(d) a special facility licence of a prescribed type.”*
- 1.11. Based on the above, Section 36B of the Liquor Control Act 1988 applies to this application, and therefore will be considered in these submissions.
- 1.12. Section 36B(3) of the Liquor Control Act 1988 states;
- 1.12.1. *“The licensing authority must not hear or determine an application to which this section applies if –*
 - 1.12.1.1. *(a) packaged liquor premises are situated less than the prescribed distance from the proposed licensed premises; and*
 - 1.12.1.2. *(b) the area of the retail section of those packaged liquor premises exceeds the prescribed area; and*
 - 1.12.1.3. *(c) the area of the retail section of the proposed licensed premises exceeds the prescribed area”.*
- 1.13. Regulations Nos. 9AAA and 9AAB of the Liquor Control Regulations 1989 stipulate the distance and area prescribed referred to in Section 36B of the Liquor Control Act;
- 1.14. Regulation No.9AAA states;
- 1.14.1. **“Area prescribed (Act s. 36B)**
 - 1.14.1.1. *For the purposes of section 36B, the area of 400m² is prescribed.”*
- 1.15. Regulation No. 9AAB states;
- 1.15.1. **“Distance prescribed (Act s.36B)**
 - 1.15.1.1. *(1) For the purposes of section 36B, the following distances are prescribed -*

- 1.15.1.1.1. *For packaged liquor premises in the metropolitan region - 5 km;*
- 1.15.1.1.2. *For all other packaged liquor premises - 12km.*
- 1.15.1.2. *(2) The distances referred to in subregulation (1) are to be calculated using the shortest route by road.”*
- 1.16. Section 36B(3) above does not apply to this application as the proposal is for a liquor store component of around 15 - 20sqm.
- 1.17. Section 36B(4) of the Act states;
- 1.17.1. *“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”.*
- 1.18. Section 36B(4) does apply to this application.
- 1.19. The applicant has put forward the reasons in this PIA as to why the local packaged liquor requirements in the locality cannot reasonably be met by the existing packaged liquor premises. These reasons are detailed in section 6 and 9 of these submissions.
- 1.20. Further, the licensing authority has consistently noted this clause states the licensing authority **must not** grant an application to which this section applies unless satisfied in respect of other matters. It is a clear directive, with no room for manoeuvre.
- 1.21. However, Parliament has tailored the wording of this section to provide the licensing authority with some discretion. This is not a directive to refuse all liquor licence applications to which this section applies.
- 1.22. The licensing authority **MAY GRANT** an application to which this section applies if it is *“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”.*
- 1.23. Paragraph 15 of the Director’s Decision No. A688963697 (BWS Thornlie decision) quotes the Minister Paul Papalia in his Second Reading Speech relating to the Liquor Control Amendment Act 2018. In that quote Minister Papalia advised Parliament that the intent behind amending this part of the Act was to *“prevent the further proliferation of small and medium packaged liquor outlets across the State”.*
- 1.24. Proliferation is defined as *“the fact of something increasing a lot and suddenly in number or amount”.* Taken together with the quote above from the Explanatory Memorandum it is clear the legislative intent was not a moratorium on new licences for packaged liquor outlets, but for the licensing authority to “manage” the process and to not allow “a

lot” of new packaged liquor licences to be granted “suddenly” or rapidly.

1.25. In *Liquorland Karrinyup* (WASC 2021/366, 28/10/2021) Justice Archer found that this was not a “difficulty test”. At 121 she stated;

1.25.1. *“I do not accept this. It is plain from the paragraphs extracted above that the Commission mistakenly thought that the Difficulty Test applied to the ‘reasonable requirements’ phrase. Further, although appearing to state on those two occasions that these matters were alternatives, on another occasion, the Commission appeared to find that an alleged consumer requirement did not satisfy the Consumer Requirements condition because it did not ‘constitute a “great difficulty or inconvenience”.*”

1.26. In paragraphs 129 to 131 Justice Archer goes on to say;

1.26.1. *“129 Construing the phrase in this way is to effectively apply the same test as applied to the then s 38(2b) of ‘cannot be provided for’. It gives no weight to the adjective ‘reasonably’.*

1.26.2. *130 The word ‘reasonable’ has been said to import a degree of objectivity in that the word reasonable means sensible; not irrational, absurd or ridiculous; not going beyond the limit assigned by reason; not extravagant or excessive.*

1.26.3. *131 In my view, the word ‘reasonably’ in s 36B(4) is intended to bear the same meaning. Accordingly, the phrase ‘cannot reasonably be met’ means ‘cannot sensibly or rationally be met’.”*

1.27. So, the intent of the legislative change was to reduce the pace of approvals for packaged liquor outlets, to manage the process, to bring a level of control. Evidently, the mechanism still exists for the granting of new packaged liquor licences when the evidence presented in an individual application merits a grant.

1.28. The objects of the Act are contained in section 5, which states the primary objects of the Act are (section 5(1)) -

1.28.1. *“to regulate the sale, supply and consumption of liquor; and*

1.28.2. *to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor, and*

1.28.3. *to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State”.*

1.29. Section 5(2) of the Act also includes the following Secondary Objects;

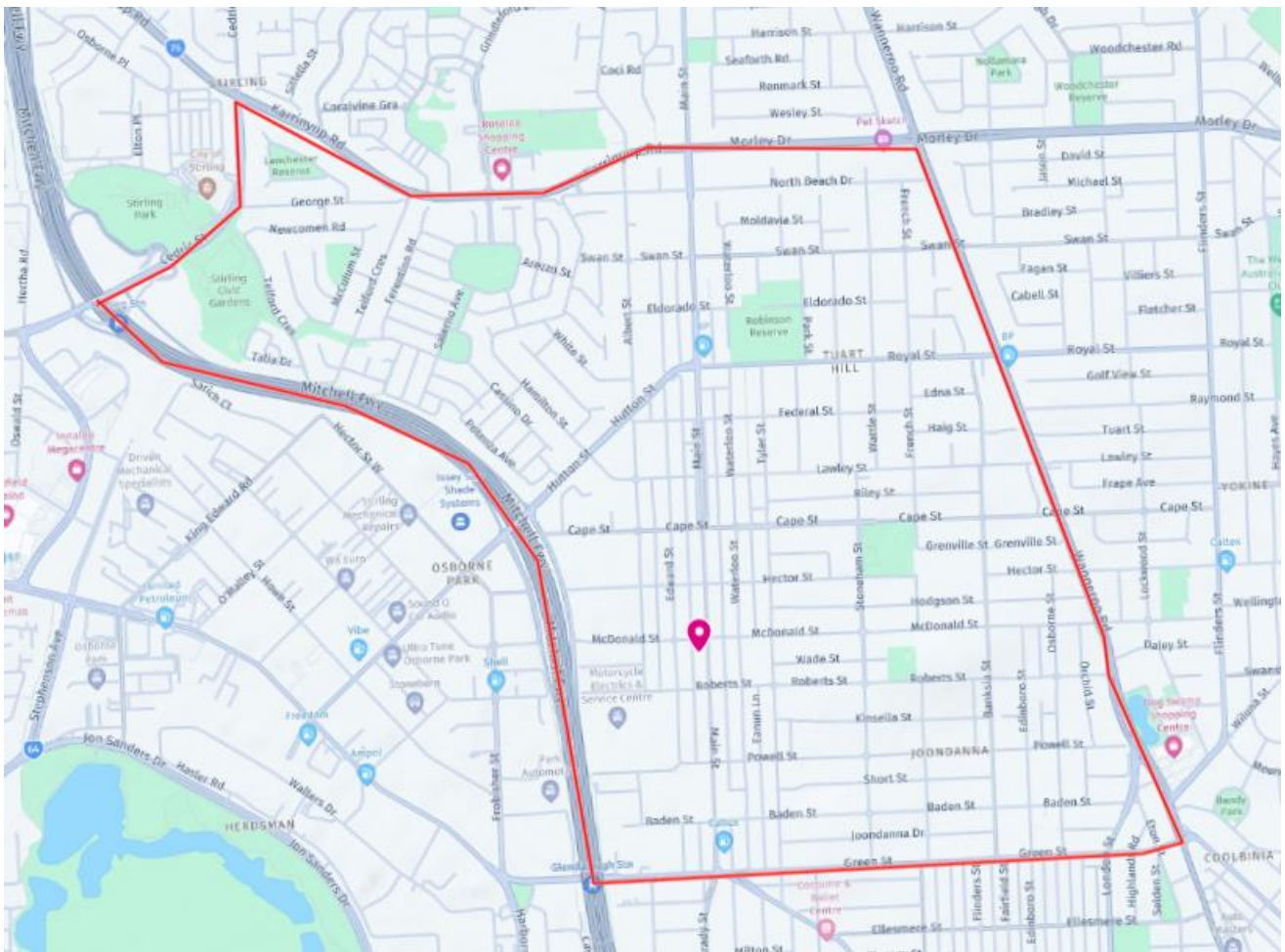
1.29.1. *“To facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and*

- 1.29.2. *To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
- 1.29.3. *To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act, and*
- 1.29.4. *To encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.”*
- 1.30. Further Section 5(3) states *“If, in carrying out any function under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence”*.
- 1.31. In the Aldi South Fremantle decision (refusing an application for the conditional grant of a liquor store licence), dated 22nd March 2019, at paragraph 26 (attachment BS02), the Director said,
 - 1.31.1. *“None of the primary objects of the Act takes precedence over each other, however, where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case¹¹ and it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations”*.¹²
- 1.32. The footnote references at 11 and 12 from the above decision relate to the following;
 - 1.32.1. Footnote 11 - Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258.
 - 1.32.2. Footnote 12 - Hermal Pty Ltd v Director of Liquor Licensing [2001] WASC 356.
- 1.33. These submissions will show there is a readily identifiable section of the local community who have a very reasonable requirement for the packaged liquor products and the service proposed to be offered by the applicant.
- 1.34. The addition of packaged liquor to this proud and important local business will provide added convenience and service to a large community of people. In particular, this application will have an impact on the Bhutanese community that exists within the locality, and further afield.
- 1.35. Lastly, for this application, the applicant conducted an extensive witness questionnaire exercise to gather objective evidence. This witness questionnaire will be referred to throughout these submissions and addressed in more detail in section 6.

2. The Locality

- 2.1. In defining the “locality” affected by the application, guidance has been provided by “Public Interest Assessment - A Policy of the Director of Liquor Licensing”.
- 2.2. The Director’s policy states that:
 - 2.2.1. *“As part of a PIA submission, applicants must provide details regarding the community in the vicinity of the licensed premises (or proposed licensed premises) and any amenity issues in the locality.*
 - 2.2.2. *The term “locality” in this instance refers to the area surrounding the proposed licensed premises. This locality will be the area most likely to be affected by the granting of an application in relation to amenity issues.*
 - 2.2.3. *...in terms of addressing objects 5(1)(b) and 5(1)(c) of the Act, an applicant may need to consider an area which is much broader than the ‘locality’ used for consideration of amenity issues. For example, an application for a destination liquor store, which may draw its clientele from a large geographic area, would need to address 5(1)(b) and 5(1)(c) of the Act in a much broader context”.*
- 2.3. The Liquor Commission, in the BWS Kelmscott decision (LC 32/2022, dated 31/8/22) provided further guidance, stating;
 - 2.3.1. *“27. 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 [181], [182], [188]).*
 - 2.3.2. *28. 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 [185]).”*
- 2.4. In Liquorland Karrinyup (WASC 2021/366, 28/10/2021) Justice Archer found;
 - 2.4.1. *“181 In my view, the word ‘locality’ in s 36B denotes an area that surrounds, and is geographically close to, the location of the proposed premises (proposed site). I consider it was not intended to equate to the area(s) from which consumers would come.”*
- 2.5. And further at 185 of Liquorland Karrinyup Justice Archer went on;

- 2.5.1. *“This is not to say that the 'locality' will inevitably, or even usually, be a circular area within a particular radius of the proposed site. 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 the area of the proposed site, the geographical spread of that community may also influence the shape and size of the 'locality'.”*
- 2.6. Taking all this into consideration the applicant wrote to the Licensing Authority in April of 2024 to agree a locality appropriate to this application and to properly define the community and vicinity that is “geographically close” to the subject premises (See attachment BS03).
- 2.7. Premises Manager Daryl McLachlan provided the following response by email on 30/4/24;
 - 2.7.1. *“I have assessed the proposed locality you have suggested for the above proposed liquor store under section 36B of the Liquor Control Act 1988.*
 - 2.7.2. *I agree with the proposed locality which in my view accurately describes the locality/neighbourhood the proposed packaged liquor outlet will be located in - which is bounded by the major arterial roads identified.”*
- 2.8. Below is a map of the agreed locality which the applicant must consider.



Map 1 Agreed Locality Map

- 2.9. In the witness questionnaire (detailed later on in these submissions), respondents were asked to describe the nature of the locality.
- 2.10. Karma of Nollamara said, *“These areas are not only peaceful, but also offer a wonderful environment, which is why many Bhutanese individuals are eager to live and work in those suburbs.”*,
- 2.11. Damcho of Tuart Hill said, *“Have lived in this locality for more than 5 years and I should say that it’s a peaceful and calm place to live in.”*,
- 2.12. Singye of Stirling said, *“One of the busiest suburbs and very safe and convenient”*, and
- 2.13. Karma of Osborne Park said, *“I lived in Joondanna before and it is a lovely neighbourhood with lots of lovely people around.”*

3. Demographics of the Locality

- 3.1. The potential impact of this proposed licence on the community within the specified locality is something that any applicant must consider and is considered here by this applicant.
- 3.2. In “The Western Australian Alcohol and Drug Interagency Strategy 2018-2022” the priority groups of concern are as follows;
 - 3.2.1. *Aboriginal people and communities.*
 - 3.2.2. *Children and young people.*
 - 3.2.3. *People with co-occurring problems*
 - 3.2.4. *People in rural and remote areas including fly-in, fly-out and drive-in, drive-out workers;*
 - 3.2.5. *Families, including alcohol and other drug using parents and significant others;*
 - 3.2.6. *Those interacting with the justice and corrections systems.*
 - 3.2.7. *Other target groups of concern include:*
 - 3.2.7.1. *Older adults:*
 - 3.2.7.2. *Culturally and linguistically diverse communities,*
 - 3.2.7.3. *People identifying as lesbian, gay, bisexual, transgender or intersex; and*
 - 3.2.7.4. *Homeless people.*
- 3.3. The applicant will consider all ten groups above for which data is readily available. The following groups were unable to be considered however, as data is not available for them;
 - 3.3.1. *people with co-occurring problems;*
 - 3.3.2. *People in rural and remote areas including fly-in, fly-out and drive-in, drive-out workers;*
 - 3.3.3. *Families, including alcohol and other drug using parents and significant others (see paragraphs 3.5 & 3.6 below);*
 - 3.3.4. *Those interacting with the justice and corrections systems;*
 - 3.3.5. *Culturally and linguistically diverse communities, people identifying as lesbian, gay, bisexual, transgender or intersex;*
 - 3.3.6. *Homeless people.*
- 3.4. Clarification has previously been sought from the Drug and Alcohol Office regarding the definition of the term “family”.
- 3.5. The Drug and Alcohol Office replied that “a specific definition of family is not provided in the Strategy document. There are a number of reasons for this, including:
 - 3.5.1. *“Recognition of the cultural diversity in Western Australia and that the definition of family can be different for different cultures.*

- 3.5.2. *Recognition that the impact of an individual's drug and alcohol use is not always confined to a household or what has in the past been defined as the 'immediate family' - it can impact more broadly on family members who are external to a household. For example, Grandparents, Aunts and Uncles are commonly reported to be impacted upon.*
- 3.5.3. *Recognition that not all families are biologically related but can still be impacted on by a person's drug or alcohol use - for example step children/guardians."*
- 3.6. With such a broad definition, it is impossible for the applicant to identify or quantify this priority population group in the locality.
- 3.7. For the purpose of this demographic study, the applicant has selected relevant Census topics from the Australian Bureau of Statistics (ABS) website (www.abs.gov.au) to provide an indication of the prevalence of each of the priority population groups within the locality for which data is available.
- 3.8. The applicant will be considering the 2021 census data relating to the suburbs of Osborne Park, Tuart Hill & Joondanna, as well as the State of Western Australia.
- 3.9. The selected ABS 2021 Census data is shown below.

Table 1 2021 ABS Census Topics for Locality Demographics

ABS Census	Osborne Park 2021	Tuart Hill 2021	Joondanna 2021	WA 2021
Total Persons	4,463	7,541	5,283	2,660,026
Aboriginal & Torres Strait Islander	1.0%	1.0%	0.9%	3.3%
Median Age	34	36	37	38
Age				
Persons aged 15-24 years	9.4%	8.7%	8.5%	11.8%
Country of Birth				
Australia	43.4%	50.2%	58.9%	62.0%
Bhutan	10.8%	3.7%	1.7%	0.2%
Language, Top responses (other than English)				
Other Southern Asian languages	8.9%	3.1%	1.2%	0.1%
Level of highest educational attainment				
Bachelor Degree level and above	36.0%	36.1%	39.5%	23.8%
Participation in the labour force				
In the labour force	70.6%	70.7%	70.2%	63.9%
Occupation				
Professionals	23.0%	28.0%	33.9%	22.0%
Median Weekly Incomes				
Personal	\$920	\$962	\$1,036	\$848
Family Composition				
Couple family without children	51.2%	48.3%	46.6%	38.8%
Dwelling Count				
Occupied Private Dwelling	91.2%	91.3%	91.0%	89.1%
Rent weekly payments				
Renter households where rent payments are less than or equal to 30% of household income	68.2%	64.6%	63.8%	59.9%
Renter households where rent payments are greater than or equal to 30% of household income	25.5%	26.9%	28.1%	28.3%
Mortgage monthly repayments				
Owner with mortgage households where mortgage repayments are less than or equal to 30% of household income	80.1%	77.4%	79.5%	72.1%
Owner with mortgage households with mortgage repayments greater than 30% of household income	11.6%	12.3%	13.2%	13.0%

Source: <https://abs.gov.au/census/find-census-data/quickstats/2021/AUS>

- 3.10. The purpose of considering the demographic data for the locality is to establish whether the priority population groups identified in paragraphs 3.2 and 3.3 above are over or underrepresented in the locality.
- 3.11. Below is a summary of the 2021 ABS data for Osborne Park, Tuart Hill & Joondanna.
 - 3.11.1. The median age in the locality is below the State figure, and yet the percentage of the population aged between 15 and 24 years is also low. This is accounted for by the high proportion of the local community aged between 25 and 39. The State figure for this age group is 21.6%, but the three suburbs in the locality are all higher, Joondanna at 32.1%, Tuart Hill at 36.3%, and Osborne Park at 41.7%. This may be seen as according with the high figure, in the locality, for “couple family without children”.
 - 3.11.2. The number of Aboriginal and Torres Strait Islander people in the locality is below the State average.
 - 3.11.3. The percentage people born in Bhutan is far higher in all 3 suburbs when compared to the State, particularly in Osborne Park - the suburb in which the proposed liquor store licence will be.
 - 3.11.4. This is particularly noteworthy given Bhutan Store will only be stocking liquor from Bhutan.
 - 3.11.5. Further, all 3 suburbs show higher percentages of people who speak ‘Other Southern Asian languages’ than the State.
 - 3.11.6. This combined with the percentage of persons born in Australia being lower in all three suburbs further emphasises that the applicant exists within a culturally diverse locality in which, there is a clear Bhutanese & Asian community.
 - 3.11.7. Looking toward other factors, all three suburbs show a locality that has people who earn higher incomes and are professionals in their chosen fields.
 - 3.11.8. There is also less rental and mortgage stress across all three suburbs when compared to the State.
 - 3.11.9. Lastly, all suburbs have a higher dwelling occupancy rate.
 - 3.11.10. All of this points to the following.
 - 3.11.10.1. This is a locality that is financially and economically vibrant,
 - 3.11.10.2. People who live here are young - middle aged responsible professionals, and
 - 3.11.10.3. The locality is a desirable place to live.
- 3.12. This locality shows a very low representation of the priority population groups.

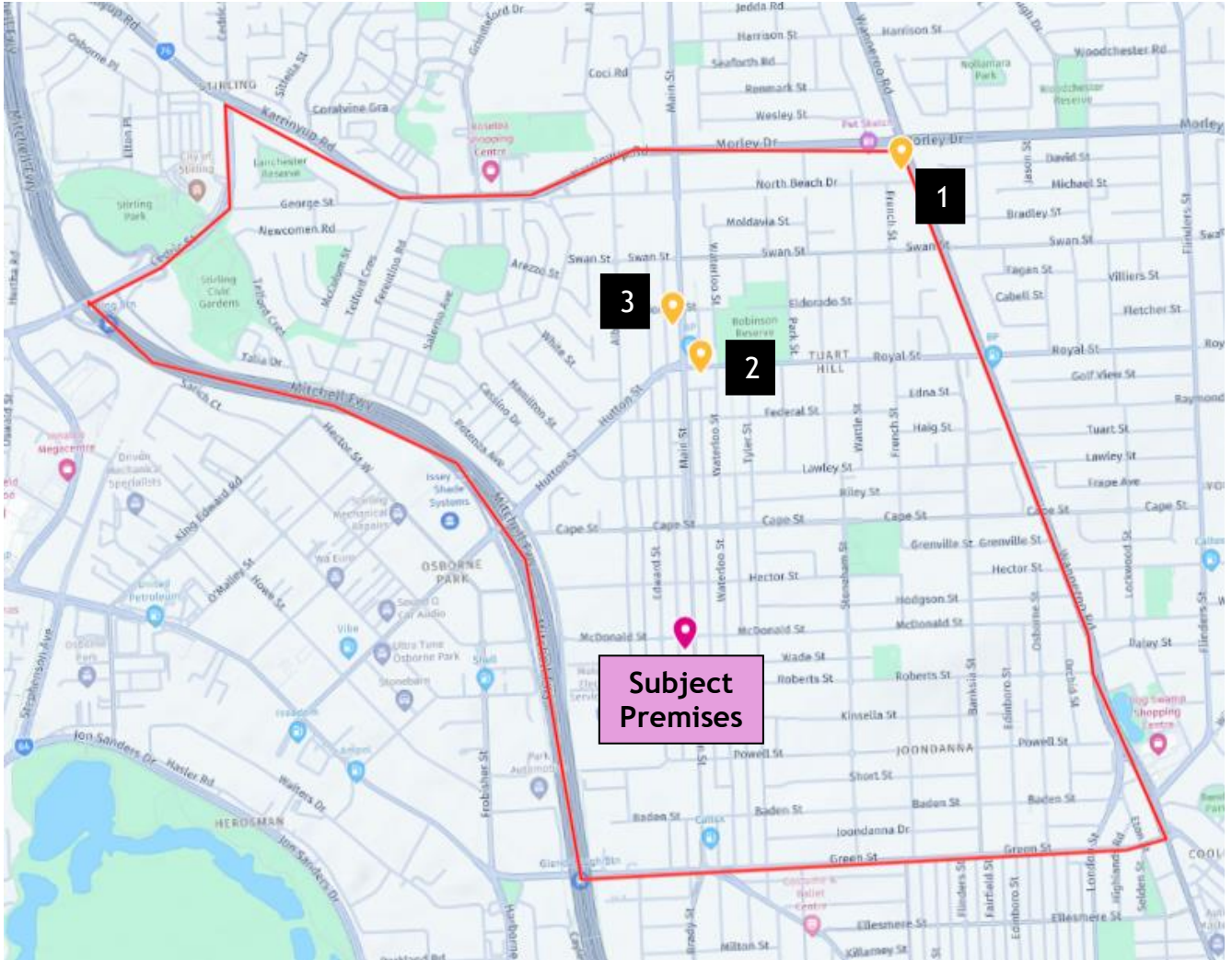
4. Outlet Density

- 4.1. The Director’s policy on Public Interest Assessments, last amended on 16th April 2020, states: “*Applicants will also need to provide outlet density information that includes:*
- 4.1.1. *If the applicant intends to sell packaged liquor, the location of all existing licensed premises within the locality.*
 - 4.1.2. *Nature of services provided by the other licensed premises; and*
 - 4.1.3. *The level of access to, and diversity of the services.*”
- 4.2. In May 2024, the applicant searched the website of the Office of Racing, Gaming and Liquor for all licensed premises located within the new agreed locality.
- 4.3. The applicant then eliminated any premises which may not trade in a manner similar to a liquor store.
- 4.4. Within this agreed locality, the following premises exist which may trade in a manner similar to a liquor store.

No.	Licence Ref	Licence Type	Premises Name	Address
1	6030004564	Liquor Store	Copper & Oak Tuart Hill	235 237 North Beach Road TUART HILL WA 6060
2	6010002055	Hotel	Osborne Park Hotel (Harry Brown & Bottlemart)	216 Main Street OSBORNE PARK WA 6017
3	6030017202	Liquor Store	Liquorland Osborne Park	233 Main St OSBORNE PARK WA 6017

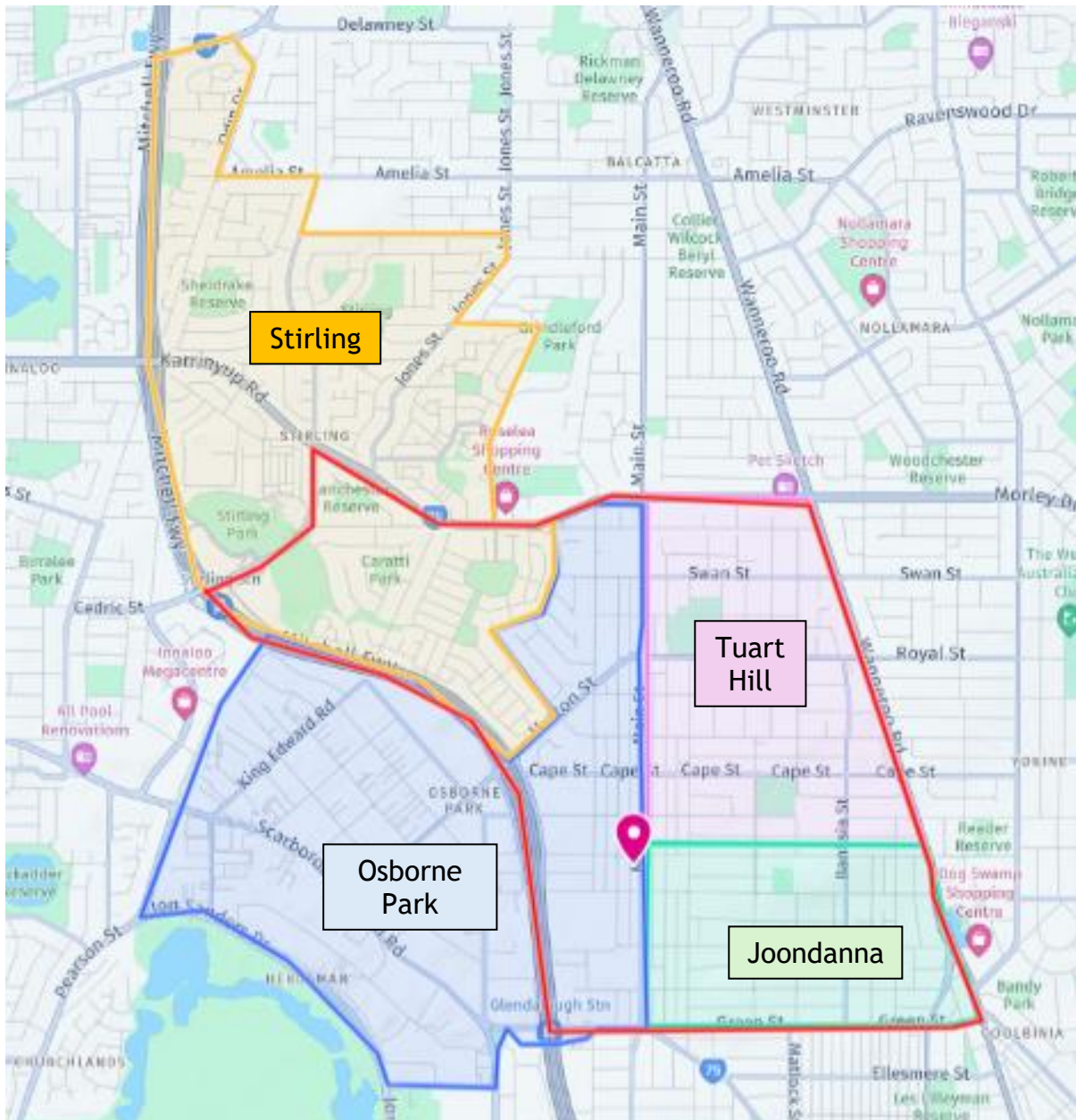
Table 2 Outlet Density of competing premises in the agreed locality

4.5. The approximate physical locations of the above premises are shown below.



Map 2 Physical location of competing outlets on locality map

- 4.6. At the time of the last Census, WA had a population of 2,660,026. This is the most recent, accurate population count for the State.
- 4.7. In July of 2022, Canford received a database of current and suspended liquor licences from the Licensing Authority. As of July 2022, WA had;
 - 4.7.1. 269 hotel licences (without restriction)
 - 4.7.2. 440 tavern licences (without restriction), and
 - 4.7.3. 656 liquor store licences.
- 4.8. This means there was **approximately** one packaged liquor outlet for every 1,949 West Australians, on average.
- 4.9. The map below shows that the agreed locality (red outline) houses 100% of the Tuart Hill and Joondanna suburbs, as well as approximately one third of Osborne Park and Stirling.



- 4.10. Using the 2021 ABS Stats, it can be estimated that the 2021 locality population was 17,700.
- 4.11. Considering the number of packaged liquor outlets available in the locality (being 3), the Applicant concludes there is only one packaged liquor outlet for 5,900 people.
- 4.12. Taking this 2021 population number into 2023, and accounting for the proposed licence at Bhutan Store, this figure then becomes one packaged liquor outlet per 4,425 people (should the Director decide to grant this application).
- 4.13. This is ***far below*** the average for Western Australia.
- 4.14. None of the listed suburbs in the agreed locality are known population growth areas.
- 4.15. While the population may not have increased, the packaged liquor offer available to locals has not made up any ground whatsoever.

5. Evaluation of Existing Packaged Liquor Outlets in the Locality

- 5.1. This section addresses the second “key question” above (see paragraph 9.4), i.e. *“what packaged liquor services are already provided by existing packaged liquor premises in the locality”*.
- 5.2. In Liquorland Karrinyup Justice Archer advised, at 108”:
 - 5.2.1. *“108 For these reasons, I would answer the question of law in relation to ground 1 in the negative - the phrase 'requirements of consumers for packaged liquor' in the definition of 'local packaged liquor requirements' in s 36B(1) of the Act is not limited in its scope to the physical item or product of packaged liquor.”*
- 5.3. In the Liquor Commission decision for Liquorland Karrinyup (LC 35/2022, dated 8/11/2022) the Commission provided further guidance;
 - 5.3.1. *“121. Further, the determination of public interest is not isolated from considerations of competition, convenience, product range and efficiency. This understanding was confirmed by Archer J in Liquorland when her honour, at paragraph 106, stated that such matters are relevant to both the Public Interest and Consumer Requirements Conditions.*
 - 5.3.2. *122. The Applicant has presented persuasive consumer and expert evidence in favour of the view that the proposed store would satisfy consumer requirements for convenience and competition and would enhance the amenity of the locality in a manner that is consistent with planning objectives and community expectations concerning large shopping centres. In contrast, there is minimal to no indication of any negative aspects arising from granting the application.”*
- 5.4. In BWS Kelmscott (LC 32/2022) The Liquor Commission found;
 - 5.4.1. *“23. Section 36B(4) was considered at length in Liquorland. 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 (and in the context of there also being a Public Interest condition) (Liquorland [74]).*
 - 5.4.2. *24. 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 [101]).

- 5.4.3. *25. 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 [104], [131], [134]).*
- 5.4.4. *26. 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 [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 [106], [108])”.*
- 5.5. In this section the Applicant will consider the relevant factors which the Liquor Commission referenced in the quote above in respect of the existing packaged liquor outlets in the locality.
 - 5.5.1. The product range,
 - 5.5.2. Customer convenience, and
 - 5.5.3. Service and Efficiency.
- 5.6. To assist in considering these factors, the applicant had Research Solutions (RS) conduct an independent mystery shop exercise on all competing packaged liquor outlets within the agreed locality.
- 5.7. This report can be read in full in attachment BS04. Further, the stock-list they were provided with can be found in attachment BS05.
- 5.8. RS confirmed the scope of the mystery shop to be as follows.

A series of mystery shops was undertaken by Research Solutions of three liquor outlets in Osborne Park. The mystery shop involved an online mystery shop of each product in each store and a telephone contact with the premise to determine if it sold any Bhutanese liquor, specifically whisky, wine and beer.

The overall result of the online mystery shop and the telephone contact was that none of the three premises below usually stocked Bhutanese liquor and there was no Bhutanese liquor in store when the mystery shops occurred in the week of the 15th July 2024.

- 1 Copper & Oak - Tuart Hill.**
1/235 North Beach Drive, Tuart Hill, WA 6060
- 2 Liquorland – Osborne Park**
233 Main Street, Osborne Park, WA 6017
- 3. Osborne Park Hotel (Harry Brown Liquor Store & Bottlemar Drive-through)**
216 Main Street, Osborne Park, WA 6017

- 5.9. The findings of this report help inform the sub-headings listed in paragraphs 5.4.1. - 5.4.4. and further back up the applicant’s claim

that the packaged liquor product range and service it proposes to provide is unmatched in the locality.

5.10. **Mystery Shop Exercise - Results**

5.11. In conducting the **online** mystery shop for the 4 stores that allowed specific online product search.

5.11.1. Copper & Oak Tuart Hill had **0 products** from the draft stock-list provided available to be purchased online (**0%**)

5.11.2. Liquorland Osborne Park had **0 products** from the draft stock-list provided available to be purchased online (**0%**)

5.11.3. Osborne Park Hotel (Harry Brown Liquor Store & Bottlemart Drive-through) had **0 products** from the draft stock-list provided available to be purchased online (**0%**)

5.12. In conducting the in-person mystery shop for the 3 stores;

5.12.1. Copper & Oak Tuart Hill had **0 products** from the draft stock-list provided available to be purchased in-store (**0%**)

5.12.2. Liquorland Osborne Park had **0 products** from the draft stock-list provided available to be purchased in-store (**0%**)

5.12.3. Osborne Park Hotel (Harry Brown Liquor Store & Bottlemart Drive-through) had **0 products** from the draft stock-list provided available to be purchased in-store (**0%**)

5.13. Type (and source) of packaged liquor

5.13.1. As this mystery shop has shown, the type of packaged liquor, being Bhutanese packaged liquor, is not available / found at any of the locality's competing outlets.

5.14. The product range

5.14.1. No other outlet in the locality has a comparable range of Bhutanese packaged liquor products.

5.14.2. The range of Bhutanese liquor to be available at Bhutan store, is unmatched in the locality.

5.15. Customer convenience

5.15.1. There is nowhere else in the locality where people are afforded the opportunity to purchase their Bhutanese packaged liquor at the same time and place as their Bhutanese goods or groceries.

5.16. Competition

5.16.1. Paragraphs 4.6 to 4.15 above show the locality is well short of the number of packaged liquor outlets per head of population when compared to other localities in WA.

5.16.2. On average in WA there is one packaged liquor outlet per 1,949 people, but in this locality that number is far higher at one packaged liquor outlet per 4,425 people (if this application were to be granted).

5.16.3. On the basis of these numbers, it is open for the licensing authority to find that the locality is under-represented by packaged liquor outlets.

6. Objective Evidence

- 6.1. From July to October this year, the applicant implemented a witness response strategy both online and in-person, to gather objective evidence for these submissions.
- 6.2. A hard copy of the witness questionnaire can be found at attachment BS07
- 6.3. The following information / documentation was made available to potential respondents.
 - 6.3.1. Floor plans (attachment BS08),
 - 6.3.2. Map of the locality (attachment BS09),
 - 6.3.3. Draft stock-list (attachment BS05), and
 - 6.3.4. Intended Manner of Trade document (attachment BS10).
- 6.4. In total, the applicant has gathered 99 responses. It should be noted that a further 54 questionnaires were attempted, but no data was entered. They have been removed from final consideration as they have no bearing on the final data.
- 6.5. The applicant submits 2 further questionnaires were issued.
 - 6.5.1. The first of these 2 questionnaires was the exact same questionnaire as the original, but question 12 was amended to include the correct competing outlets (see attachment BS07). This second questionnaire received 6 new & complete responses. All data from these 6 responses, excluding questions 12 & 13, have been put together with the raw witness data of the first questionnaire - see attachment BS06
 - 6.5.2. The second questionnaire was a 2 question survey that repeated question 12 (with the correct competing outlets), and followed up with the same question 13 from the original questionnaire. This questionnaire received 55 responses. This was issued to the same 99 respondents who completed the first questionnaire
 - 6.5.2.1. The respondents from the second questionnaire who completed the question 12 (amended) & 13 had their response data added to this second raw data sheet.
 - 6.5.2.2. The questionnaire can be found in attachment BS11, and the raw data sheet in attachment BS12.
- 6.6. The applicant went to these extra lengths to correct an error in the original questionnaire to ensure proper data was gathered in regards to the opinions of the local community around the locality's competing outlets, as well as the current level of supply of Bhutanese liquor.
- 6.7. The following family / staff took part in the questionnaire;
 - 6.7.1. Kunzang Wangdi,
 - 6.7.2. Ninda Wangmo,
 - 6.7.3. Tandin Wangmo, and

6.7.4. Jimba Thai

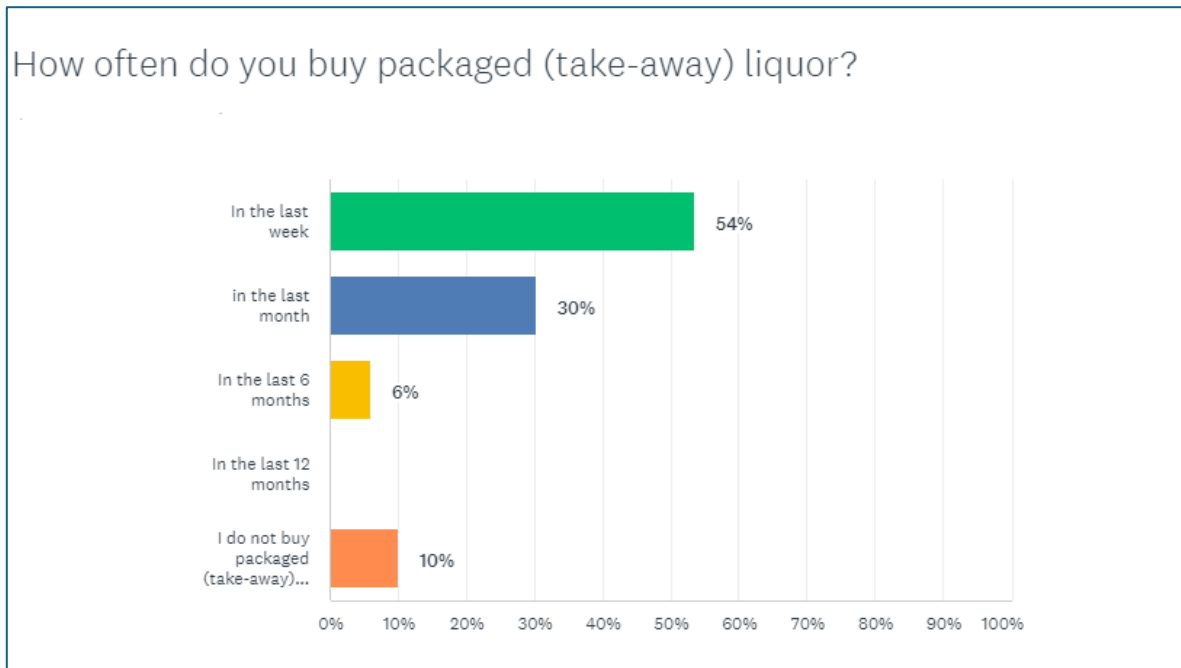
- 6.8. Throughout these submissions, the witness data received from the questionnaires listed above will be compiled and referred to as one data set.
- 6.9. Data from question 12 & 13 of the **first** questionnaire/raw data sheet will not be used in these submissions.
- 6.10. Of those who listed their address, **40%** of the respondents are shown to live within 2 suburbs of the proposed liquor store.
- 6.11. When asked how far away they lived from Bhutan store, **60%** selected "**More than 2km**".
- 6.12. Further, **53%** of the 103 respondents said "**No**" when asked, "**Do you live/work in or close to the suburb of Osborne Park, Joondanna or Tuart Hill?**"
- 6.13. Respondents were then asked "**Are you currently a customer of Bhutan Store?**";
- 6.14. Of the **105** responses received to this question, **104** said, "**Yes**".



- 6.15. When asked to select what most accurately describes them, over three-quarters of respondents (**78%**) said they were "**a regular customer of Bhutan Store**". The next most selected answer was "**a local resident**" - which was selected by **16%** of the 105 respondents.
- 6.16. Given this application is geared towards Bhutanese people, South-East Asian people - i.e. the customer demographic targeted by Bhutan Store, it is unsurprising that the above data details a respondent pool of people who are not majority local but have come from far and wide to be a customer of Bhutan Store.
- 6.17. The objective evidence presented so far throughout this section shows this respondent pool to be an accurate representation of the community who would most benefit from the approval of this liquor licence.

6.18. The applicant then sought to establish their relationship with packaged liquor.

6.18.1. Respondents were asked, “How often do you purchase packaged liquor?”. Their answers are graphed below.



6.19. The applicant notes that around **54%** of the 105 respondents say “*in the last week*”.

6.20. A further third of the respondents said they’ve bought packaged liquor within the last month.

6.21. The responses to these questions above detail a relevant respondent base.

6.21.1. Nearly half of the respondent base lives in the same suburb as the premises or within 2 suburbs,

6.21.2. Regardless of where they live, nearly the entire respondent pool is a customer of Bhutan Store, and

6.21.3. Over **half** of the respondents have purchased packaged liquor in the last week.

6.22. Noting all of this, further questions and respondent answers are detailed throughout these submissions, to aid in the applicant satisfying Section 36B(4) and Section 38 of the Liquor Control Act (1988).

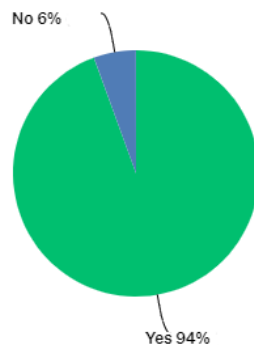
7. Proposed Style of Operation

- 7.1. Bhutan Store's liquor store will be approximately 15 - 20sqm.
- 7.2. The applicant has created a draft list of Bhutanese liquor products and brands they intend to stock (attachment BS05).
- 7.3. The liquor store area will be dedicated to displaying Bhutanese liquor, and will also feature a couple of fridge doors to provide space for chilled liquor products for the convenience of shoppers.
- 7.4. The point of difference being focused on is the refined and unique range of Bhutanese liquor. The store celebrates Bhutanese culture, so this proposed liquor store will be a welcome addition to their service offering.
- 7.5. Mr. Wangdi will extend and reconfigure his point of sale (POS) area in the shop to cater to customers shopping for Bhutanese liquor.
- 7.6. The dedicated packaged liquor area of the store will be close to the existing supermarket POS area, allowing for very effective monitoring of the area by staff.
- 7.7. This packaged liquor area will have new shelves installed and the area will be enclosed as a security and safety measure.
- 7.8. It is the vision of this store to bring these Bhutanese liquor products to its customers, who are mostly of Bhutanese origin. This will be particularly welcome for people seeking Bhutanese packaged liquor products as, being a land-locked country, with the complications of trade routes either through India or China, it is difficult to import products from Bhutan.
- 7.9. Note that this stock list is a draft and will change / be moulded by product availability and consumer demand, relating to Bhutanese liquor.
- 7.10. Mr. Wangdi will create dedicated spaces (as necessary) for new product launches and tastings to promote the Bhutanese liquor brought in.
- 7.11. The trading hours of the store are 10am - 8pm, Monday to Friday, and 11am - 8pm Saturday & Sunday. The liquor store component of this store will mimic these hours.



- 7.12. In the witness questionnaire, the following is evident.
- 7.12.1. Bhutan Store’s customer base travel some distance to the store for their Bhutanese groceries on offer.
 - 7.12.2. Over half of respondents (54%) purchased packaged liquor in the last week.
 - 7.12.3. 88% of respondents said **“Yes”** to the question, **“Do you have a requirement for Bhutanese liquor?”**
- 7.13. With the approval of this application, Bhutan Store would be able to give the local community an opportunity to combine their weekly goods and grocery shop with a well laid out and highly specialised packaged liquor offer in one premises.
- 7.14. Shopping for liquor can be conveniently done as part of the normal shopping excursion and will not require a separate trip or stop. This will be an extremely convenient one-stop shopping service, particularly for those shoppers who have transport or mobility issues.
- 7.15. In the witness questionnaire, respondents were asked, **“The applicant intends to stock a unique range of Bhutanese liquor. After reviewing the intended manner of trade document (link here) and the proposed stock-list (link here), would you be likely to become a customer of the proposed liquor store?”**
- 7.16. Of the **95** respondents to this question, **90 (94%)** said **“Yes”**.

The applicant intends to stock a unique range of Bhutanese liquor. After reviewing the intended manner of trade document (linked at the start of the survey) and the proposed stock-list (linked at the start of the survey), would you be likely to become a customer of the proposed liquor store?



- 7.17. Elaborating on their answers;
- 7.17.1. Pema from Bentley said, **“I usually ask my family in bhutan to send Bhutanese liquor as they are not available here. Having a liquor shop in Perth would benefit many Bhutanese living in WA.”**,

- 7.17.2. Thukten from Leeming said, *“Liquor in Bhutan has significance beyond being a simple drink for social gatherings. It’s often more used as an offering for various religious activities and also a significant part of baby shower guest: which can’t be substituted by the wines we get here”*,
 - 7.17.3. Dawa from Baldivis said, *“I am the owner of a bar and I’d like to include Bhutan brands products in my bar.”*
 - 7.17.4. Sonam Rivervale said, *“As it will be convenient for me to buy from one place.”*,
 - 7.17.5. Sonam from Willetton said, *“Being a Bhutanese citizen I like a Bhutanese brand only.”*,
 - 7.17.6. Phurba from Como said, *“We don’t get anywhere to buy liquor”*,
 - 7.17.7. Chezangla from Yokine said, *“It will be convenient to get liquor and other Bhutanese items from the same store”*,
 - 7.17.8. Singye from Stirling said, *“We need Bhutanese liquor as one of the choices within our community as most of the Bhutanese liquors would be cheaper and affordable.”*,
 - 7.17.9. Tshering from Riverton said, *“Yes because we can’t get Bhutanese liquor here in perth”*,
- 7.18. A larger pool of witness comments can be found in attachment BS06.



- 7.19. Further, respondents were then asked, *“Where do you currently buy your Bhutanese liquor products from?”*;

- 7.20. Jigme from Osborne Park said, *“I don’t buy. I usually request people coming from bhutan to bring one or two bottle for me”*,
- 7.21. Karma from Osborne Park said, *“We don’t have any store for Bhutanese liquor”*,
- 7.22. Namgay from Narrabundah said, *“From Bhutan. I used to asked someone coming from Bhutan to bring bottle of it from there”*,
- 7.23. Tshering from Kewdale said, *“It’s difficult to find our own Bhutanese liquor here”*,
- 7.24. Sonam from St James said, *“Only via travel”*,
- 7.25. Chezangla from Yokine said, *“There is no Bhutanese liquor shop here at present, we get as gift when there is someone coming from Bhuran”*,
- 7.26. Sangay from Wilson said, *“Currently Bhutanese Liquor products are not available in Australia. The Bhutan Store will be the first business firm to make Bhutanese Liquor products available apart from other Bhutanese products currently selling.”*,
- 7.27. Thukten from Leeming said, *“We seldom get it. Sometimes we get it from people who can brew local drinks”*,
- 7.28. Singye from Stirling said, *“We don’t get any Bhutanese liquor as of now freely in the market here in Perth. We buy from Bhutan.”*,
- 7.29. Tandin from Karawara said, *“Since there is no Bhutanese liquor here in Australia I ask my relatives to send it from Bhutan.”*
- 7.30. More answers can be viewed in the raw data sheet - see attachment BS06

8. Background and Experience of the Applicant

- 8.1. Bhutan Store is the first retail business owned and operated Kunzang Wangdi, director of the applicant company. This liquor licence application is also a first for Mr. Wangdi.
- 8.2. Mr. Wangdi is very involved and well known in the Bhutanese community. The idea for the store came about when he noticed people were saying that there were many Bhutanese products which they missed and could not purchase in Perth, including spices, dried vegetables, herbal teas, and some clothing, including national dress and incense used for religious festivals.
- 8.3. So, he decided to open the store.
- 8.4. Being a land-locked country, supply lines are very tricky, but Mr. Wangdi has managed to get the business up and running successfully.
- 8.5. The store is now in its second year, with sales going very well.
- 8.6. The store is family-ran - Mr. Wangdi runs the store with his wife and niece. Other family members pitch in from time to time.
- 8.7. 95% of the grocery items he stocks come from Bhutan, but he also carries some items from other countries, like Singapore.
- 8.8. While relatively new to running such a business, as well as taking on the responsibilities of supplying and selling packaged liquor, Mr. Wangdi has and will continue to dedicate time and resources to ensuring responsible service of alcohol.

9. Section 36B(4) of the Act - Restrictions on Grant or Removal of Certain Licences Authorising the Sale of Packaged Liquor

- 9.1. In the Second Reading Speech on the introduction of the Liquor Control Amendment Bill 2018 dated 20th February 2018, the Minister for Racing and Gaming, Mr. Paul Papalia stated:
 - 9.1.1. *“.....to prevent the further proliferation of small and medium packaged liquor outlets across the state, the act will be amended so that the licensing authority must not grant an application unless it is satisfied that existing premises in the locality cannot reasonably meet the requirements for packaged liquor.”*
- 9.2. Subsequently, a new Section 36B(4) of the Liquor Control Act (WA) 1988 was proclaimed and came into effect on 2nd November 2019. Section 36B(4) reads as follows:
 - 9.2.1. *“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”.*
- 9.3. In this section the applicant considers whether the local packaged liquor requirements are reasonably met by the existing packaged liquor premises in the locality.
- 9.4. **Director’s Decision No. A122893507 for Hangawee Outlet Northbridge**
 - 9.4.1. In paragraph 24, the Director’s Delegate stated that *“there are three key questions that arise out of s 36B(4):*
 - 9.4.1.1. *What are the local packaged liquor requirements?*
 - 9.4.1.2. *What packaged liquor services are currently provided by the existing premises in the locality? and*
 - 9.4.1.3. *Can the existing packaged liquor premises in the locality reasonably meet those local packaged liquor requirements (or not).”*
- 9.5. In the Supreme Court decision relating to Liquorland Karrinyup Justice Archer considered three grounds of appeal. In simple terms they were;
 - 9.5.1. The meaning of “local packaged liquor requirements”,
 - 9.5.2. The meaning of “cannot reasonably be met”, and
 - 9.5.3. The relevant “locality”.
- 9.6. **Local packaged liquor requirements.**

9.6.1. The licensing authority have, since November 2019, held a line that this related only to liquor itself, and did NOT include matters of shopper preference.

9.6.2. However, Justice Archer found as follows;

106 There is no reason why matters such as convenience, product range, service and efficiency would not, or should not, be relevant to both conditions.

108 For these reasons, I would answer the question of law in relation to ground 1 in the negative - the phrase 'requirements of consumers for packaged liquor' in the definition of 'local packaged liquor requirements' in s 36B(1) of the Act is *not* limited in its scope to the physical item or product of packaged liquor.

9.6.3. In the applicant's case, the requirements they have identified as not being met in the locality are.

9.6.3.1. A requirement for a range of Bhutanese liquor, and

9.6.3.2. Requirement for the convenience of one stop shopping for Bhutanese packaged liquor and Bhutanese goods / groceries.

9.7. Cannot reasonably be met

9.7.1. The Liquor Commission interpreted this test as occasioning substantial inconvenience or difficulty. Her Honour was quite critical of this, and she concluded.

121 I do not accept this. It is plain from the paragraphs extracted above that the Commission mistakenly thought that the Difficulty Test applied to the 'reasonable requirements' phrase. Further, although appearing to state on those two occasions that these matters were alternatives, on another occasion, the Commission appeared to find that an alleged consumer requirement did not satisfy the Consumer Requirements condition because it did not 'constitute a "great difficulty or inconvenience"'.⁷⁵

134 The question of law in relation to ground 2 is what is the meaning of the phrase 'cannot reasonably be met' in s 36B(4) of the Act. In my view, the answer is 'cannot sensibly or rationally be met'.

9.7.2. Noting what Her Honour has said the applicant believes it is unreasonable for customers to have to leave the locality to obtain their requirements for Bhutanese packaged liquor, with many saying they either bring it with them after visiting Bhutan, or arrange for it to be sent over in postal packages..

9.7.3. Matters of convenience are considered a reasonable requirement. One-stop shopping for Bhutanese packaged liquor, goods and/or groceries has been shown through objective evidence gathered (see section 6), to be an important and sought after service in the locality.

9.7.4. The other stores in the locality are, therefore, not able to ‘sensibly or rationally’ meet this proven requirement (See paragraphs 9.28 - 9.35).

9.8. The relevant locality

9.8.1. Her Honour found,

186 Unfortunately, due to the variety of factual situations that may arise, it is impossible to prescribe a specific test to be applied or even an exhaustive list of the factors that will or may be relevant in the determination of the locality in any given case. As has been observed in other jurisdictions, there will be some cases where it will be easy to determine the locality, and other cases where it will not be. An example of the former would be where the proposed premises was to be placed in a small country town. An example of the latter would be where it was to be placed in the CBD.

9.8.2. Given the large natural and man-made boundaries that enclose the locality - being 4 major roads - the applicant put together submissions for a revised locality to be considered for this liquor licence application. In reviewing these submissions, the Director agreed with the applicant’s reasoning and affirmed the new locality shown in section 2 and on page 1 of attachment BS03 as the locality to be considered for this application.

9.9. Undoubtedly Her Honour’s findings in Grounds 1 and 2 will impact future decisions and the thinking of the licensing authority, as well as the deliberations of would-be applicants in deciding whether or not to proceed to prepare and lodge an application to which section 36B(4) applies.

9.10. The following paragraphs address the three key questions the Director posed in the Hangawee decision and in the light provided by Justice Archer’s decision in Liquorland Karrinyup discussed from paragraphs 9.5. - 9.9.

9.11. The applicant has taken these three questions, and has related them to this application, and the objective evidence obtained.

9.12. **First question, what are the local packaged liquor requirements?**

9.13. In the witness questionnaire, respondents were asked “*Do you have a requirement for Bhutanese Liquor?*”

- 9.14. Of the 93 responses to the above question, 82 respondents (**88%**) said **“Yes”**.
- 9.15. Secondly, in the witness questionnaire, respondents were asked, *“The applicant intends to stock a unique range of Bhutanese liquor. After reviewing the intended manner of trade document (link here) and the proposed stock-list (link here), would you be likely to become a customer of the proposed liquor store?”*
- 9.16. Of the **95** respondents to this question, **90 (94%)** said **“Yes”**.
- 9.17. Respondents to the **3-question** witness questionnaire were asked;
- 9.18. *“There are 3 existing packaged (take-away) liquor outlets in this locality - see below;1. Copper & Oak Tuart Hill2. Osborne Park Hotel (Harry Brown & Bottlemart)3. Liquorland Osborne ParkDo these existing packaged (take-away) liquor outlets in the locality meet your Bhutanese packaged liquor needs? i.e. stock range, cold stock available, staff knowledge etc.”*
- 9.19. Of the **56** responses to the above question, **34** of them (**61%**) said **“No”**.
- 9.20. Elaborating on their answers.
- 9.20.1. Pema from Bentley said, *“Liquor brands from Bhutan are not available in any of these outlets.”*,
- 9.20.2. Delia said, *“Bhutan produces original and authentic liquor - the above mentioned retailers do not cater for the Bhutanese community.”*,
- 9.20.3. Kinley from Mirrabooka said, *“None of these liquor store sells Bhutanese wine and liquor”*,
- 9.20.4. Tshewang from Yokine said, *“Not aware of any business selling Bhutanese liquor in WA.”*,
- 9.20.5. Singye from Stirling said, *“These liquor outlets do not have any of the Bhutanese liquor products which are world class.”*,
- 9.20.6. Sangay said, *“These existing liquor outlets have only common brands of liquor but with the establishment of Bhutan Store would provide more choices to the customers including liquor brands from Bhutan.”*
- 9.20.7. More comments can be seen in attachment BS12.
- 9.21. Looking at the responses to the questions above, there is a clear majority demand for the packaged liquor offering and one-stop shopping convenience proposed in this application.
- 9.22. **Second question, what packaged liquor services are currently provided by the existing premises in the locality?**
- 9.23. Sections 4 and 5 of these submissions discuss the state of the current packaged liquor offer in the locality.
- 9.24. As noted through these submissions, the packaged liquor services currently provided do not meet the reasonable requirements of

consumers who live, work in or resort to the locality, see paragraphs 9.17 to 9.19 above.

- 9.25. **Third question can the existing packaged liquor premises in the locality reasonably meet those local packaged liquor requirements (or not).**
- 9.26. The answer here has to be a resounding no.
- 9.27. The evidence presented in these submissions clearly leads to the conclusion that consumers at the Bhutan Store are unable to access a full range of Bhutanese packaged liquor in the locality, or indeed anywhere else in Perth.
- 9.28. On matters of **shopper convenience**, respondents to the **3-question** witness questionnaire were also asked *“Do any of the outlets listed above offer the ability to purchase Bhutanese grocery / consumer products and Bhutanese liquor products in one shop, i.e. without having to get in your car and drive to another store?”*
- 9.29. Of the 55 responses to this question, **80% (44)** of respondents said **“No”**.
- 9.30. Further, respondents were asked, *“Would you find it convenient to be able to purchase your Bhutanese grocery items in the same store as your Bhutanese liquor requirements?”*
- 9.31. Of the 85 responses to this question, **96% (82)** of respondents said **“Yes”**.
- 9.32. These matters of convenience and preferences shown above were found to be a relevant consideration for the Director by Her Honour in Liquorland Karrinyup, see below;

The object in section 5(1)(c)

⁷⁹ The 'requirements of consumers' in s 5(1)(c) has been interpreted to include such matters as shopper convenience and preferences (including the convenience of one stop shopping).⁶¹ In addition, 'consumer requirements' has been (understandably) assumed to mean what consumers demand or desire, as distinct from what they cannot manage without.

- 9.33. In the Decision of Director of Liquor Licensing relating to Liquor and Gourmet World, dated 19th October 2005 (Attachment BS13), in the conclusion section, the Director’s Delegate stated;

9.33.1. *“The correct test to be applied in respect of an application for a liquor store licence under section 38(2b) of the Act was set out by Anderson J in Liquorland (Australia) Pty Ltd v Austie Nominees Pty Ltd (1999) 20 WAR 405 where he said at 415):*

9.33.1.1. *The correct test under s38(2b)*

I think that, on the proper construction of s 38, an applicant for a liquor store licence is required by subs (2b) to satisfy the licensing authority that the reasonable requirements of

the public for liquor itself (or liquor of a particular type, such as bottled table wines) and related services cannot be provided for in the affected area by licensed premises already existing in the area;...”

10. Section 38(4)(a) of the Act - Harm or Ill-health

- 10.1. Section 38(4)(a) of the Liquor Control Act (1988) asks the applicant to consider “*the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor.*”
- 10.2. In this section the applicant assesses the risk with respect to the harm or ill-health that might be caused to people, or groups of people within the locality should this licence be granted.
- 10.3. This is a proposal to provide a small, dedicated area for Bhutanese liquor inside a specialised Bhutanese grocery / goods store, that is geared towards the Bhutanese and South-east Asian community.
- 10.4. The Liquor Commission has found that liquor stores, when combined with a supermarket are at the passive end of liquor licence approvals. In a decision (LC 21/2009 The Wine Box Nedlands) (attachment BS14) confirming the Wine Box Nedlands liquor store licence, the Liquor Commission at 4.11, on page 13 of that decision noted;
 - 10.4.1. “*It is the Commission’s view that a liquor store licence, as part of the Nedlands IGA grocery outlet, is very much at the passive end of liquor licence approvals and in particular, is unlikely to have any bearing on.... liquor consumption practices*”. (Emphasis added)
- 10.5. The inference here is that a liquor store combined with a supermarket is unlikely to have a significant impact on the potential for alcohol related harm or ill-health in a locality. While the applicant intends to sell the liquor from within their grocery & goods store in a dedicated area, and not have a separate physical ‘store’, the same premise and logic still applies here.
- 10.6. Further, this is a proposal for a very modestly sized liquor store, in a highly visible area of a small Bhutanese grocery and goods store.
- 10.7. The proposed licensed area will be very easily and effectively managed and monitored by the staff of the licensee, and the specialised nature of the liquor being offered is unlikely to attract those looking for cheap liquor to consume rapidly.
- 10.8. The demographics of the locality have been discussed in some detail in section 3 of these submissions and concluded there are no significant concerns in respect of the identified priority groups.
- 10.9. According to the Federal Government’s Snapshot entitled Australia’s Health 2018 (<https://www.aihw.gov.au/getmedia/7c42913d-295f-4bc9-9c24-4e44eff4a04a/aihw-aus-221.pdf>)
 - 10.9.1. “*most Australians drink alcohol at levels that cause few harmful effects*”. (Page 204)
 - 10.9.2. “*As well, fewer Australians are drinking at levels that contribute to alcohol-related harm over a lifetime. However, about 26% of people drink more than is*

recommended on a single occasion, and they do this at least once each month. Younger people show more promising trends when it comes to alcohol—fewer people aged 12-17 are drinking and a greater proportion are abstaining from drinking altogether.” (Page 165, emphasis added)

- 10.9.3. “The NDSHS data reveal several changes in drinking patterns compared with those for 2013, including that:
- 10.9.4. people are drinking less often
- 10.9.5. daily and weekly drinking rates have declined
- 10.9.6. fewer young people aged 12-17 are drinking alcohol and the proportion abstaining from alcohol has increased
- 10.9.7. people aged 14-24 are delaying starting to drink—the average age at which they first tried alcohol has increased
- 10.9.8. fewer people are exceeding the lifetime risk guideline (Table 4.6.1).” (Page 204)

Table 4.6.1: Significant changes in drinking behaviours, 2013 and 2016

Drinking behaviours	2013	2016
Drank alcohol daily (14 years and over)	6.5%	5.9%
Drank alcohol weekly (14 years and over)	37.3%	35.8%
Drank alcohol less often than weekly (14 years and over)	34.5%	35.8%
Abstained from alcohol (12-17 years)	72.3%	81.5%
Age when had first full serve of alcohol (14-24 years)	15.7 years	16.1 years
Exceeded lifetime risk guidelines (14 years and over)	18.2%	17.1%

Source: AIHW 2017.

10.10. The Snapshot, in a section titled “Alcohol-related incidents and harm”

10.10.1. *Excessive consumption of alcohol increases the risk of people putting themselves and others at risk of harm (AIHW 2017). The NDSHS showed that, in 2016 almost 1 in 6 (17%) recent drinkers aged 14 and over put themselves or others at risk of harm while under the influence of alcohol in the previous 12 months—significantly down from 21% in 2013. In 2016, the most likely risky activity undertaken while under the influence of alcohol was driving a motor vehicle (9.9% of recent drinkers). Overall, more than 1 in 5 (22%) Australians had been a victim of an alcohol-related incident in 2016—down from 26% in 2013. Between 2013 and 2016, verbal abuse (22% and 19%, respectively), being put in fear (13% and 11%) and physical abuse (8.7% and 7.3%) all declined.” (Page 206, Emphasis added.*

10.11. Further, it’s worth noting the following statistics from these studies:

10.11.1. The National Health Survey (NHS), first results - 2017 - 18,

10.11.1.1. There is a continued decline of standard drinks consumed per day by persons aged 18 years and over, from 19.5% of people in 2011 - 2012, to 16.1% in 2017-2018.

10.11.1.2. There are fewer adults 18 and over consuming four standard drinks on one occasion, dropping from 44% (2014 - 15) to 42.1% (2017 - 18).

10.12. Criminal/offence Statistics

10.13. To further satisfy Section 38(4)(a), the applicant sought to investigate the incidence of alcohol related offences within the locality as recorded by the WA police. However, no statistics were available on the WA Police website in relation to alcohol related crime for any towns or suburbs in WA.

10.14. Consequently, the applicant has considered crime statistics for the agreed locality, keeping in mind that these figures do not specify any incidence of alcohol.

Table: 2022/23 Crime statistics recorded by the WA Police for the locality and Western Australia.

Type of Offence	Osborne Park	Tuart Hill	Joondanna	Western Australia
Homicide	-	1	-	95
Sexual Offences	14	10	5	7,409
Assault (Family)	35	53	40	28,124
Assault (Non-Family)	24	16	11	15,700
Threatening Behaviour (Family)	8	6	8	5,397
Threatening Behaviour (Non-Family)	12	6	4	4,526
Deprivation of Liberty	1	-	1	297
Robbery	1	-	3	1,801
Dwelling Burglary	35	56	32	14,986
Non-Dwelling Burglary	40	6	3	6,153
Stealing of Motor Vehicle	45	29	12	6,530
Stealing	291	201	98	80,050
Property Damage	74	61	46	28,331
Arson	3	4	-	955
Drug Offences	67	46	23	22,9996
Graffiti	9	2	4	2,263
Fraud & Related Offences	398	82	95	34,026
Breach of Violence Restraint Order	17	18	8	14,135
Total of Selected Offences	1,074	597	393	273,774

Source: <https://www.police.wa.gov.au/Crime/CrimeStatistics/>

10.15. A summary of the above offences can be seen in the table below.

Table: Average number of recorded offences per thousand people in 2021/23 in the locality and the Western Australia state. Source - ABS Census 2021.

	Osborne Park	Tuart Hill	Joondanna	Western Australia
Number of Recorded Offences in 2022/23 (according to the WA Police)	1,074	597	393	273,774
ABS Census population (2021)	4,463	7,541	5,283	2,660,026
Number of offences per 1,000 people	241	79	74	103

10.16. The applicant notes that the total of offences per 1,000 people is well below the State average for 2 out of the 3 suburbs listed.

10.17. The applicant also submits that Osborne Park shows a higher rate of offending, but makes the following comments.

10.17.1. Osborne Park is a commercial / retail area, attracts a very large number of visitors which naturally swell the crime stats. Other suburbs like Northbridge, Fremantle etc. have these same patterns.

10.17.2. Osborne Park is also not a known growth area, so the increase of visitors/workers in the area skew the crime figures when relating them back to the population of the suburb. To give an accurate idea of the potential for harm and ill-health in Osborne Park is difficult, as the statistics above are not representative of the people that make up the Osborne Park locality / community residents.

10.17.3. The subject premises is located in the far east of the Osborne Park suburb, close to the boundaries with Joondanna and Tuart Hill. To the east of the freeway.

10.17.4. The applicant contends that it is the busy commercial district centred around Scarborough Beach Road which is more likely to attract the larger number of visitors to the locality, and therefore is the likely cause of the higher crime stats for the suburb

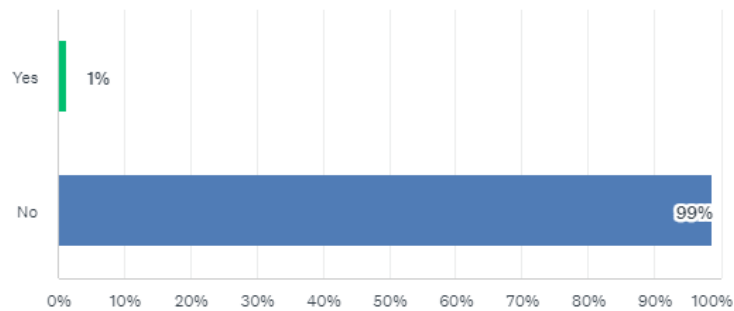
10.17.5. Lastly, it is not enough to simply say that because there are elevated crime stats the licence should not be granted (see Carnegies decision, referenced in paragraph 14.3). The Director must also look at and evaluate the likely nexus between the proposed liquor store and the alleged (or perceived) increase in harm, quantify it, and make a judgement on the likelihood of the proposed liquor store causing any increase in harm. A small, packaged liquor

outlet inside a specialist store such as this one has a very low potential for increased levels of harm in the locality.

10.18. In the witness questionnaire, respondents were asked, *“Are there any people or any groups of people in the locality who, in your opinion, would be at risk of increased and undue harm as a result of the granting of this application?”*.

10.19. Of the **80** responses received, **79 (99%)** of respondents said, **“No”**.

Are there any people or any groups of people in the locality who, in your opinion, would be at risk of increased and undue harm as a result of the granting of this application?



11. Section 38(4)(b) of the Act - A Report on the Amenity of the Locality

- 11.1. Section 38(4)(b) of the Liquor Control Act, asks the applicant to consider *“whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened”*.
- 11.2. With the proposed liquor store only taking up 15-20sqm of the store, the proposed liquor store component of the premises is very small by contemporary standards.
- 11.3. Having such a modest portion of this store dedicated to Bhutanese packaged liquor has very limited potential for negative impacts on the local community. It is not the main selling point or draw card for the applicant to bring customers to its store. Rather it is an ancillary service that further adds to their overall service offering - being a one-stop shopping experience for Bhutanese retail goods, and food & beverage.
- 11.4. The questionnaire evidence presented with these submissions provides cogent evidence that there is a clearly identifiable section of the public who have a reasonable requirement for the proposed liquor store, the liquor range and licensed services it intends to provide.
- 11.5. Given the foregoing statements it is open for the licensing authority to conclude the amenity of the locality would be enhanced by the granting of the proposed liquor store licence, as it will permit the store to offer a range of products and an important licensed service of one-stop shopping not found in the locality, but greatly desired by the local community.
- 11.6. In the questionnaire, respondents were asked *“In what ways do you consider adding packaged (take-away) liquor to Bhutan Store will impact the amenity of the community - whether it be a positive or negative impact?”*
 - 11.6.1. Dawa from Baldivis said, *“More Bhutanese population in Perth over last few years has increased the demand”*,
 - 11.6.2. Sonam from Willetton said, *“It will help Bhutanese people when ever we need the products.”*,
 - 11.6.3. Pema from Bentley said, *“It will provide more choices and convenience to customers who wants to purchase liquor in addition to buying other products.”*,
 - 11.6.4. Sangay from Wilson said, *“To choose the product purely lies on respective customers and I feel this would result a positive impact whereby customers will get opportunity to taste Bhutanese brand of liquor.”*,
 - 11.6.5. Dondhen from Karawara said, *“Positive, something local and of home”*,
 - 11.6.6. Thukten from Leeming said, *“It will make a lot of things easier for Bhutanese especially during religious rituals where we need specific Bhutanese liquors”*,
 - 11.6.7. Wangchuk from Karawara said, *“1. Convenience for Locals: It could provide greater convenience for local residents who*

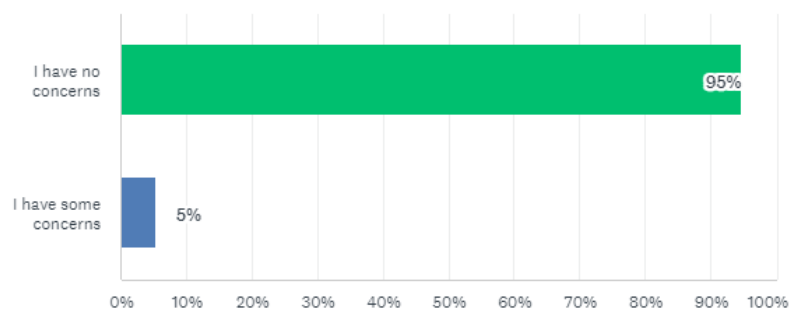
seek Bhutanese liquor or other varieties, reducing the need to travel farther for their preferred beverages. 2. Cultural Appreciation: Offering Bhutanese liquor might introduce the community to unique products from Bhutan, fostering cultural exchange and diversity in the locality.”

11.6.8. Tandin from Karawara said, *“Adding packaged liquor to Bhutan Store could positively impact the community by offering unique products and enhancing local diversity.”*

11.7. Further, respondents were also asked, *“What concerns (if any) do you have about the possible impact of this proposed liquor store on the locality?”*

11.8. Of the 79 responses received, **74 (95%)**said, *“I have no concerns”*.

What concerns (if any) do you have about the possible impact of this proposed liquor store licence on the locality?



11.9. Elaborating on their answers;

11.9.1. Sangay from Wilson said, *“I am of the view that it will provide more choices to the customers. I don’t see any issue”*,

11.9.2. Tashi from Forrestdale said, *“No concerns instead could be more options and preferences for Bhutanese food And beverages”*,

11.9.3. Karma from Hamersley said, *“No concerns as people do consume even from other stores”*,

11.9.4. Karma from Nollamara said, *“Drinkers will drink whatever the matter but it will be more convenient and reliable to have our own drinks at nearby.”*,

11.9.5. Tandin from Riverton said, *“I have no concerns about the impact on the locality as I believe the proposed liquor store will add value and diversity to the area.”*

12. Section 38(4)(c) of the Act - Offence, Annoyance, Disturbance or Inconvenience

- 12.1. Section 38(4)(c) of the Liquor Control Act (1988) asks the applicant to consider “*whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises*”.
- 12.2. The proposed liquor store component of Bhutan Store makes up a very small portion of the premises. It is not the dominating feature.
- 12.3. It should be noted that access to the packaged liquor being sold can only be achieved from within the supermarket - this includes any pickups of online orders. This means that potential offenders will more likely be deterred from petty theft and participating in other anti-social behaviour. Most likely, unless they are a patron of the supermarket, potential offenders would not even realise there is a packaged (takeaway) liquor service available at the centre.
- 12.4. Further, the sale of packaged liquor is limited to the hours of the store, specified above in section 7.
- 12.5. Given the above, and the fact there will be no consumption on premises, save for product tastings, it is the applicant’s considered opinion the proposed liquor store licence will not cause any undue offence, annoyance or disturbance to anyone in the local community.
- 12.6. In the questionnaire respondents were asked, “*What concerns (if any) do you have about the potential for annoyance, offence, disturbance, or inconvenience that the granting of this application may cause to people who live, work, visit or otherwise resort to the locality?*”
- 12.7. Of the **80** responses received, **76 (95%)** said, “**I have no concerns**”.
- 12.8. Elaborating on their answers;
 - 12.8.1. Sonam from St James said, “*It will have no significant impact as it is normal as any type of liquor available.*”
 - 12.8.2. Tashi from Forrestdale said, “*I don’t think so. If at all there is any it could be no different from other liquor shops*”.

13. Section 5(1)(a) of the Act - Primary Objects

- 13.1. Section 5(1)(a) states that a primary object of the Act is;
 - 13.1.1. *“to regulate the sale, supply and consumption of liquor”*.
- 13.2. Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 13.3. To regulate means;
 - 13.3.1. *“to control or direct according to rule, principle, or law”* or
 - 13.3.2. *“to put or maintain in order”*
- 13.4. It does not mean to restrict or to reduce.
- 13.5. There may be some circumstances where a restriction or a reduction is warranted, but the word “regulate” implies more flexibility than either “restrict” or “reduce”.
- 13.6. It is possible to “regulate” and to “increase” at the same time.
- 13.7. Therefore, this primary object should not, of itself, prevent this application from being granted.
- 13.8. It is possible to properly regulate the sale, supply and consumption of liquor and grant this application.
- 13.9. As clearly shown in these submissions the proposed liquor store licence will;
 - 13.9.1. Allow customers of Bhutan Store to purchase their Bhutanese groceries, goods and liquor needs in one location and in one trolley, and
 - 13.9.2. Offer a range of distinguishable and specialized packaged liquor products and a licensed service not currently available in the locality.
- 13.10. Again, this liquor store licence application is to allow Mr. Wangdi to bring an additional service to his store. As cited in these submissions, this store is important to the Bhutanese community that exists within the locality, and further afield in Perth.
- 13.11. This is not an application to place a large commercial / chain liquor store. It is an application to allow a local business operator to further add to their service offering with a small line of packaged liquor that is in line with what his customers want.
- 13.12. The applicant’s objective evidence has also clearly shown there is an identifiable and substantial section of the local community which has a reasonable requirement for the products and services proposed to be offered under this licence, noting the applicant is amenable to a suitably worded trading condition to ensure it sticks with the proposed manner of trade.
- 13.13. It is therefore open for the licensing authority to conclude the granting of this licence would not lead to a proliferation of liquor licences in the locality without justification.

14. Section 5(1)(b) of the Act - Primary Object

- 14.1. Section 5(1)(b) states that a primary object of the Act is;
 - 14.1.1. *“to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor”.*
- 14.2. Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 14.3. In paragraph 46 of *Carnegies v Director of Liquor Licensing* [2015] WASCA 208 (“Carnegies decision”) in respect of the National Hotel, Fremantle (attachment BS15), the following conclusion is found.
 - 14.3.1. *“It is not sufficient to simply reason that, where there is already a high level of harm in the particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol related harm which is likely to result from the grant of the particular application.”*
- 14.4. Paragraph 62 of that same decision reads;
 - 14.4.1. *“the reasons of the Commission reveal that it considered the application was not in the public interest, but not:*
 - 14.4.1.1. *(a) the positive aspects of the application that were weighed;*
 - 14.4.1.2. *(b) how the Commission reached the conclusion there was a likelihood of increased harm and ill-health if the application was granted; or*
 - 14.4.1.3. *(c) the degree of increased harm or ill-health that was likely to have resulted if the application was granted.”*
- 14.5. In this application, therefore, the applicant is not required to show that no harm whatsoever may occur if this application is granted, only that the applicant will do all that is reasonable to minimise harm and ill-health that could potentially occur if this application is granted, and that any potential for harm or ill-health is minimised and is not “undue”.
- 14.6. This then must be weighed, in equal measure, against the benefits that will accrue to the local community.

15. Section 5(1)(c) of the Act - Primary Object

- 15.1. Section 5(1)(c) states that another primary object of the Act is;
 - 15.1.1. *“to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State”.*
- 15.2. Being a primary object means that it is of equal importance to the other two primary objects of the Act.
- 15.3. In other words, it is just as important for the Director to cater for the requirements of consumers as stated above, as it is to minimise the potential for harm or ill-health due to the use of liquor.
- 15.4. In the end it is a weighing and balancing of these equal objects which will determine whether a liquor licence should be granted or not.
- 15.5. The Director has, on several occasions, reminded applicants of the importance of reading this primary object fully. Many applicants stop after reading *“to cater for the requirements of consumers for liquor and related services”.*
- 15.6. However, this primary object goes on to direct applicants to have *“regard to the proper development of the liquor industry”.*
- 15.7. In LC 01/2021, dated 13th January 2021, at paragraph 61 the Liquor Commission noted;
 - 15.7.1. *“Further, the issue of consumer competition must be considered where one criticism of the previous 38(2b) “needs test” was that it established an “artificial barrier to protect some sections of the industry from competition” and was seen to constitute “an unjustifiable barrier to entering the liquor industry” contrary to the then current National policies on consumer competition (Liquor Licensing Act 1988 Report of the Independent Review Committee May 2005).”*
- 15.8. Bhutan Store is geared mainly towards the Bhutanese community. It’s goal, through this application, is to provide its community with Bhutanese packaged liquor, not found elsewhere in the locality, and to provide it with the convenience of a one-stop shop.
- 15.9. The evidence presented in these submissions shows a desire to be able to purchase Bhutanese packaged liquor in a one-stop shop situation, as is proposed here.
- 15.10. Therefore, it is open for the licensing authority to find that granting this licence would cater to the requirements of consumers for Bhutanese packaged liquor products in a very modestly sized liquor store and would represent the proper development of the packaged liquor industry.
- 15.11. The responses to the questionnaire throughout these submissions, show that there is a strong consumer requirement for the proposed liquor products in the locality and by the Bhutanese / South-East Asian community.

- 15.12. Not all consumers of packaged liquor have the same tastes or the same packaged liquor requirements. There are a great many different types and style of packaged liquor outlet, and a seemingly endless list of different packaged liquor products. Some people like to drink expensive liquor, others prefer cheaper options or they may have to work to a tight budget, others still prefer beer and rarely, if ever, drink wine, then there are cider drinkers, or people who only like to drink spirits.
- 15.13. Thus, it is fair to say not all people like all types of liquor, and consequently “the requirements of consumers for packaged liquor” are many and varied, and almost limitless in their diversity.
- 15.14. This has been acknowledged by the licensing authority in decisions like Mount Barker Liquor store (Decision A219143, dated 16th September 2011), where on page 8 the Director concluded;
- 15.14.1. ***“The licensing authority must have regard to the expectations and contemporary standards of consumer requirements for packaged liquor and related services. Consumers have a requirement for a range of licence types and in this regard the public living or resorting to Mount Barker presently have no liquor store facilities; a facility that many visiting Mount Barker and living in other areas of Western Australia, enjoy. The proposed liquor store will have different features to the bottle shops at the Plantagenet and Mount Barker hotels, and the opportunity to purchase liquor from a liquor store is consistent with object 5(1)(c) of the Act; namely, the proper development of the liquor industry in the State. The use and development of the proposed liquor store in Mount Barker is consistent with object 5(2)(a) of the Act, in that the licensing authority is to have regard to facilitating “...the use and development of licensed facilities...reflecting the diversity of the requirements of consumers in the State.””*** (Emphasis added)
- 15.15. Also, in the decision granting a liquor store licence to WA Cleanskin Cellars @ Bunbury (Decision A215232, dated 6th December 2010), the Director stated on page 4;
- 15.15.1. ***“I find that on the evidence submitted by the applicant and having regard to the diversity of the requirements of consumers, the grant of the application will cater for the requirements of consumers for packaged cleanskin wines and related services”.*** (Emphasis added)
- 15.16. Therefore, when the Director’s Delegate referred, in the above quote, to “*the requirements of consumers for packaged liquor in the locality*”, he obviously did not mean that an applicant is required to show that their proposed package liquor offering is required by ALL people who live in, or resort to, a locality.
- 15.17. By the same logic, just because a locality has other liquor stores located within, it does not mean that all consumers are able to satisfy their reasonable requirements for packaged liquor.

- 15.18. All the foregoing demonstrates the importance of the question, which the licensing authority has directed needs to be answered by each applicant seeking a liquor licence with the ability to sell packaged liquor, viz: **what are the requirements for packaged liquor in the locality?**
- 15.19. However, it is also vital to recognise the diversity of consumer demand, and how that demand changes and evolves, and what it actually means.
- 15.20. The Secondary Object of the Act further instructs the licensing authority to have regard for the diversity of consumer demand, when it states, it is an object of the Act **“to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State”**. (Emphasis added)
- 15.21. The varied needs of the consumers in the State could include;
- 15.21.1. Bottled wines (Liquor and Gourmet World, Decision of Director of Liquor Licensing, dated 19th October 2005)
 - 15.21.2. Cleanskin wines (WA Cleanskin Cellars @ Bunbury, Decision A215232)
 - 15.21.3. Limited choice, limited access and uncompetitive prices (Kojonup Liquor Store, Decision A31180, dated 22nd June 1999, see page 2). This was sufficient for the Director to conclude ***“the licensed premises already existing in the affected area, including the objectors’ premises, cannot provide for the reasonable requirements of the public for packaged liquor”***.
 - 15.21.4. Product range and trading hours (Cunderdin IGA, Decision A206551, dated 11th May 2010). On page 6 the Director found ***“the licensing authority is to have regard to the expectations and contemporary standards of consumer requirements for packaged liquor”*** which include ***“product range, (trading) times”*** (page 7).
 - 15.21.5. Product range, South African products, (Kalahari A Taste Of Africa, Decision A222037, dated 15th April 2013)
- 15.22. Thus, it is open for the licensing authority (and the applicant would welcome this) to condition an approval to ensure the applicant adheres to its stated trading intent, as it has done in many previous grants, including
- 15.22.1. WA Cleanskins Cellars @ Bunbury, Decision A215232, dated 6th December 2010 - ***“The sale of liquor is restricted to Cleanskin Wines only; and the sale of cask wine is prohibited”***.
 - 15.22.2. Kalahari A Taste Of Africa, Decision A222037, dated 15th April 2013 - ***“The sale and supply of liquor under this licence is limited to only South African products”***.
 - 15.22.3. Cellarbrations at Charlies, Decision A198691, dated 22nd October 2009 - ***“The licensee’s litreage of liquor must consist of at least 20% of Southern European liquor”***.

15.22.4. Melissa’s Filipino Shop, Decision A406370349, dated 12th March, 2024 - *“The licensee is only permitted to sell Filipino and South-East Asian liquor products.”*

16. Section 5(2)(a), (d), (e), and (f) of the Act - Secondary Objects

- 16.1. In carrying out its functions under the Act, the licensing authority shall have regard to the primary objects of the Act and also to the following secondary objects -
- 16.1.1. (a) *“To facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State”; and*
 - 16.1.2. (d) *“To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor”; and*
 - 16.1.3. (e) *“To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act”: and*
 - 16.1.4. (f) *to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.”*
- 16.2. Through this application the licensing authority will be facilitating the development of a much anticipated and very responsible packaged liquor service in this locality.
- 16.3. Critically it is open for the licensing authority to conclude that through the granting of this liquor store licence it will be facilitating the development of a licensed facility reflecting the specific and identified consumer requirement for a specialised range of Bhutanese liquor products.
- 16.4. The granting of this licence can also be seen as encouraging responsible attitudes towards the sale and supply of liquor. The liquor store is modest in size, located within the Bhutan store and as such, will be operated in conjunction with the rest of the store, run by the same operators.
- 16.5. Therefore, in the opinion of the applicant, in granting this licence the Director of Liquor Licensing will be fulfilling his obligations under section 5(2) of the Act.

17. Conclusion

- 17.1. Consistent with Liquorland Karrinyup (LC 35/2022) the Applicant has presented persuasive consumer and expert evidence in favour of the view that the proposed liquor store would satisfy consumer requirements for convenience and product range and would enhance the amenity of the locality in a manner that is consistent with community expectations. There is also minimal to no indication of any negative aspects that may arise from granting the application.
- 17.2. The store is a hub for the Bhutanese, and attracts many community members to gather there, whether they are new to WA or have lived here for many years.
- 17.3. The message from the respondents to the witness survey is very clear. They say the existing packaged liquor services in the locality do not satisfy their packaged liquor requirements, and they would welcome the range of Bhutanese packaged liquor products and the opportunity to shop for Bhutanese groceries and packaged liquor in the one shop.
- 17.4. There is clearly strong support for this application.
- 17.5. In the witness questionnaire, when respondents were asked, *“Do you have any other comments regarding this liquor store licence and Bhutan Store?”*
 - 17.5.1. Thukten from Leeming said, *“I think it’s time Bhutanese people have access to Bhutanese liquor. It will be so much convenient if bhutan store caters as we get many of the Bhutanese stuff from bhutan store”*,
 - 17.5.2. Pema from Bentley said, *“It will help promote social and cultural unity, bonding and relationships as many Bhutanese will visit the Bhutan store.”*,
 - 17.5.3. Tshering from Riverton said, *“It would be a great opportunity to get Bhutanese liquor here if approved.”*,
 - 17.5.4. Kunzang from Osborne Park said, *“It would be better for the Bhutanese community to shop from one store”*,
 - 17.5.5. Sangay from Wilson said, *“I look forward to Bhutanese Store bringing liquor from Bhutan to Perth and giving customers a better choice of their likes and taste.”*,
 - 17.5.6. Sonam from Innaloo said, *“It’s a wonderful news and great help to the Bhutanese people who wants to buy Bhutanese liquor without having to get it from Bhutan.”*,
 - 17.5.7. Dawa from Baldivis said, *“As a bar owner my self, granting license to Bhutan store to import alcohol from Bhutan provides me with the opportunity to provide more choices for customers”*.
- 17.6. The deliberations in section 9 of these submissions leave it open for the licensing authority to conclude that section 36(B)(4) is not an impediment to the granting of this application.

- 17.7. This then allows for the proper consideration of the public interest question.
- 17.8. The applicant invites the licensing authority to find it is in the public interest to grant this application for the following reasons;
 - 17.8.1. The proposed liquor store will be very small by contemporary standards.
 - 17.8.2. The fact there will be no consumption on premises, save for product tastings, it is the applicant's considered opinion the proposed liquor store will not cause any undue offence, annoyance or disturbance to anyone in the local community.
 - 17.8.3. Further, the applicant is an experienced local retailer, who is well known to the community.
 - 17.8.4. There is limited potential for any detrimental impacts through the proposed additional supply of liquor into the community. There is, on the other hand every prospect that the overall amenity of the locality will be enhanced through the granting of this application.
- 17.9. The evidence presented in these submissions very strongly supports the grant of this application.

Drafted for and on behalf of Druksell Australia Pty Ltd by;

Phil Cockman
Canford Hospitality Consultants Pty Ltd
Friday, October 11, 2024

Attachments

BS01	Director's Decision: Hangawee Outlet Northbridge (2020)
BS02	Director's Decision: ALDI South Fremantle Decision (2019)
BS03	Locality Submissions
BS04	Mystery Shopper Report
BS05	Bhutan Store Draft Stock-list
BS06	Survey Raw Data Sheet
BS07	Witness Survey Hardcopies
BS08	Proposed Floor Plans
BS09	Map of the Locality
BS10	Intended Manner of Trade Document
BS11	Three (3) Question Survey Hard Copy
BS12	Three (3) Question Survey Raw Data Sheet
BS13	Director's Decision: Liquor and Gourmet World
BS14	Liquor Commission Decision: LC21/2009 The Wine Box Nedlands
BS15	Supreme Court Decision: Carnegies v Director of Liquor Licensing 2015 WASCA 208