

# Decision Notification

## Application Details

Application no.	219062
Licence No.	57711220
Licence Class	Packaged Liquor Sales
Premises Name	First Choice Liquor Market Hendon
Premises Address	Level 10/400 King William Street Adelaide SA 5000
Applicant ABN/ACN	LIQUORLAND (AUSTRALIA) PTY. LTD.
Application Type	Application for a Liquor Licence

## Outcome

Decision	Refused
Effective Date	22 Mar 2023

## Reasons for Decision

### **Application for Packaged Liquor Sales Licence – First Choice Liquor Market Hendon**

The Applicant, Liquorland (Australia) Pty Ltd, has applied for a Packaged Liquor Sales licence for a new First Choice Liquor Market store to be located at the new retail development on Tapleys Hill Road, Hendon.

As a delegate of the Liquor and Gambling Commissioner, I may only grant this application if I am satisfied that granting the application is in the community interest. In determining whether the application is in the community interest, I must have regard to:

- the nature of the business conducted or to be conducted under the licence (as prescribed);
- the harm that might be caused (whether to a community as a whole or a group within a community) due to the excessive or inappropriate consumption of liquor.
- the cultural, recreational, employment or tourism impacts; and
- the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises.

The Applicant submitted a Community Impact Assessment report (**CIR**) which was accompanied by:

- A report by Ekistics Planning and Design (the **Ekistics Report**);
- A report by Sean Andrews Stephens of Ethos Urban (the **Ethos Report**); and
- A survey by Data Analysis Australia (the **DAA Report**)

The Australian Hotel Association (SA) (the **objector**) made a written submission objecting to the application.

I have read all the submissions and evidence submitted by the parties and turn to consider the same by reference to the factors I must have regard to in determining whether the application is in the community interest.

Before doing so, I must consider the locality.

## Locality

The Community Interest Guidelines provide a guide for applicants in relation to the 'locality' relevant to their application, and states that applicants are required to identify the geographic area from which they expect to draw customers having regard to the intended nature of the business of the licensed premises.

The Guidelines speak of the locality as referring "*to the area surrounding the licensed premises / proposed licensed premises and is the area most likely to be affected by the grant of the application*".

The applicant submits that the nature of large formal liquor outlets must be taken into consideration when determining the locality, as they are quite different to small, traditional bottle shops.

In discussing the role and function of large format liquor retailing, the Ethos report makes general observations that large format liquor stores serve a larger area than traditional bottle shops and that, generally consumers are willing to travel further in order to shop at these types of stores.

Given that the application is for a large format liquor store, the applicant considers their locality to primarily be within a 5km radius from the proposed offering, however notes that there may be secondary catchments beyond this to the north and east of the proposed site.

I note that the objector has not raised any concerns with the proposed locality, and after reading the report prepared by Ethos Urban I am satisfied that the applicant has correctly identified the locality.

## The nature of the business conducted or to be conducted under the licence

The proposed outlet will form part of the redeveloped Hendon Shopping Centre located on Tapley's Hill Road, Hendon. The proposed outlet will be complemented by other retail businesses, including a Romeo's Foodland supermarket. The outlet will be positioned adjacent to the Foodland, however entry to the outlet will only be from the carpark rather than from within the shopping centre. It is anticipated that this outlet will be a key anchor tenant for the new shopping centre, alongside the Foodland.

The total floor size of the proposed outlet will be 700m<sup>2</sup>, and whilst the Ethos report notes that the typical large format liquor store ranges in floor size from 900m<sup>2</sup> to 1,500m<sup>2</sup>, the report also notes that a typical liquor store ranges from 100m<sup>2</sup> to 250m<sup>2</sup>, and draws the conclusion that customers will still consider the proposed outlet to be a large format liquor store.

The Ethos report provides further guidance in relation to the nature and purpose of large format retailing and how it differs to that of a traditional bottle shop. They identify three ways in which they are different, being size, pricing and range. They note that the floor size is typically larger, they typically have a lower pricing structure and a more extensive range of liquor.

In terms of the range proposed at the outlet, the applicant submits that the range will be based on First Choice's usual core product range, with the Store Manager having the ability to order from a mid-range and extended range depending on local demographics or to meet local demand. In total the proposed store will carry 2570 lines of liquor, comprising beer, wine, spirits and RTD's, and 114 non-liquor items. Of this, 800 products will be exclusive to Coles Liquor stores and approximately 550 products will be sourced from South Australian producers, supporting local markets. They submit that this type of range is consistent with the large formal liquor model, which places an emphasis on a wider range of product lines and an emphasis on bulk sales.

The objector submits that the premises should not be considered a large format store and in reality this is just another application for a standard bottle shop. They contend that the customer accessible floor area, being 440m<sup>2</sup> is not significantly larger than the floor area of the BWS across the road, which they note is 300m<sup>2</sup>. They also contend that the BWS liquor store would provide more than just "top up needs" as it is double the size as a typical bottle shop, which is said to be around 100m<sup>2</sup> to 250m<sup>2</sup>, according to the Ekistics report.

I note that the customer accessible floor space of the proposed outlet is in fact 540m<sup>2</sup>, which is comprised of the general selling floor and also the cool room, which is accessible to customers. The Ekistics report states that the floor area of the BWS is 300m<sup>2</sup> and I am satisfied that, given their expertise, this can be relied upon as correct. Whilst the expert reports provide guidance as to the "typical" floor space of a bottle shop and large format liquor store, the reality is that both the proposed outlet and the existing BWS liquor store across the road fall outside what the reports define as "typical" for either type of store.

For the purpose of defining the stores, I consider them to be "mid-range" stores as both are larger than your typical bottle shop, but smaller than the typical large format store. Further, I note that the proposed outlet does not fall just shy of a typical large format store, it is proposed to be 40% smaller than the typical large format store.

## **The harm that might be caused (whether to a community as a whole or a group within a community) due to the excessive or inappropriate consumption of liquor**

The Ekistics report identified a number of at risk groups from the Demographic Data, and made findings in relation to the impact the proposed outlet may have on these groups. It was found that the immediate locality is not considered particularly attractive to children and young families and the demographics profiles suggests that there is not likely to be a higher representation of families in the locality. It was identified that there was a slightly higher than average number of person who identified as Aboriginal or Torres Strait Islander and there is unlikely to be a higher representation of migrant communities within the locality.

In general, the locality is comprised of a mix of slightly disadvantaged and slightly advantaged pockets, according to SEIFA data. However, the Ekistics report notes that parts of the locality are experiencing renewal and gentrification, particularly around Port Adelaide, so the level of disadvantage is expected to decrease.

The Ekistics report notes that any risk to these groups would be mitigated through the adoption of established harm minimisation measures, which the applicant has already developed and implemented across their existing stores.

A number of community facilities exist within the locality, however there is no evidence to suggest there would be any adverse impact on these facilities should the application be granted.

In term of the density of liquor outlets and the potential harm inherently present with take-away liquor sales, the applicant has relied on research conducted by the NSW Bureau of Crime Statistics and Research, which explored the relationship between density of liquor outlets and alcohol-related harm. The research indicates that once the density of packaged liquor outlets exceeds 0.75 per 1,000 residents, there is a corresponding increase in the rates of alcohol related harm, specifically incidents of assault. Ekistics report calculates that the grant of this licence would increase the density from .248 outlets per 1,000 residents to .265 outlets per 1,000 residents.

In terms of the applicant's skills and experience in regards to the responsible sale and supply of liquor, I note that it has been acknowledged in *Liquorland (Park Holme)* [2020] SALC 37, that the applicant is an "experiences liquor retailer" with "sound policies in respect of the responsible service of alcohol". I therefore hold no concerns as to the suitability of the applicant to hold a licence and appropriately mitigate any risks that may be present, particularly with regards to the at risk groups identified above.

I note that the objector did not raise any concerns regarding the potential harm the granting of the application may have on the community, or in relation to the applicant's skills and expertise. To that extent, I am satisfied that, should the application be successful, it will not cause an increase to harm within the community as a result of the excessive or inappropriate consumption of liquor.

### **The cultural, recreational, employment or tourism impacts**

The applicant notes that the granting of the application will create a number of employment opportunities for local team members, comprising 3 full time roles, 1 part time role and 8-12 casual roles. They also provide information about the various charities and appeals that Coles donate to.

I am satisfied that if the application were to be granted it would result in an increase in employment in the locality.

### **The social impact in, and the impact on the amenity of, the locality of the premises or proposed premises**

The Ekistics report provides an analysis of the statistics published by SA Police in relation to crime in suburbs which closely relate to the defined locality. Whilst it is noted that the statistics do not identify what proportion of crime is linked to the consumption of liquor, it is noted that the most relevant type of offence to a liquor store, being 'theft from shop' was slightly higher in the locality than the Greater Adelaide average (46.62%, compared to 41.93%).

As the applicant points out, it has been commonly held by the Commissioner and the Courts that it is difficult to draw any specific conclusions from the crime statistics in relation to a proposed liquor store, due to the inability to identify which crimes can be attributed to the consumption of liquor.

In any event, the higher than average 'theft from shops' in the locality is not so great that it creates a level of concern in my mind to draw the conclusion that the grant of the application would increase crime in the area and have a negative impact on the locality.

With regard to the general social profile, as discussed above under 'harm' the SEIFA data indicates that the locality is generally considered "average" and there is no data that would raise concerns over the grant of this application.

In terms of the general amenity of the area, I note the proposed outlet will be located in a retail tenancy that forms part of an approved retail development within the 'Employment Zone'. The applicant submits that the proposed outlet is consistent with the development of the centre and also the overall zone it is to be located within.

The surrounding area of the proposed outlet is primarily low density residential with some medium density housing, and it is noted in the Ethos report that the new shopping centre will be an "important retail destination" for these residents living in the surrounding areas.

Having considered the information in relation to crime statistics, and general amenity of the locality I am not concerned that the grant of this application would have a negative impact on the amenity of the locality.

## **Other Considerations**

### *Other liquor outlets in the locality*

There is currently no existing liquor outlet within the Shopping Centre in which the proposed outlet is sought, however both the Ethos report and Ekistics Report submit that there are 15 existing comparable liquor outlets within the locality. This list comprises a mix of stand-alone Packaged Liquor Sales licences, bottle shops and drive through stores attached to General and Hotel licenses and one liquor production and sales licence. Those outlets identified are:

- **BWS Royal Park:** A stand-alone bottle shop located directly across the road to the proposed outlet, with its own car park and with a pedestrian crossing available between the two sites.
- **BWS Hendon Drive:** A two-lane drive thru facility attached to the Hendon Hotel 500m South of the proposed outlet.
- **Sip n Save Alberton:** A two-lane drive thru facility attached to the Alberton Hotel 1km north of the proposed outlet.
- **Liquorland St Clair:** A bottle shop located adjacent to a Coles Supermarket within the St Clair Village Shopping Centre, 1.5km to the east of the proposed outlet.
- **Fassina Liquor, Pennington:** A stand-alone bottle shop of 250m<sup>2</sup> 1.7km to the north east of the proposed outlet.

- Liquorland West Lakes: A bottle shop located adjacent to a Coles Supermarket within the Westfield West Lakes shopping complex 2.3km to the southwest of the proposed outlet.
- Liquorland Port Adelaide: A bottle shop within the Port Adelaide Plaza Shopping Centre 2.5km to the north of the proposed outlet.

Other outlets in the locality include Big Shed Brewing, Sip n Save Seaton, Bartley Cellars Thirsty Camel, West Lakes, Sip n Save West Lakes, Liquorland Pennington, Pirate Life Brewing, Port Admiral Hotel and BWS Finsbury Drive.

The Ethos report continues by submitting that there are no large format stores within the locality, however acknowledges that there are three Dan Murphy's large format stores, and one First Choice store, located just outside the defined locality:

- Dan Murphy's Fulham Gardens (5km by car, further South on the same side of Tapley's Hill Road as the proposed outlet)
- Dan Murphy's Welland (6.3km by car)
- Dan Murphy's Brickworks (9 km by car)
- First Choice Hindmarsh (7.2km by car)

The two existing outlets in the locality that are of most significance are the two BWS liquor outlets in close proximity to the proposed outlet. One is a stand-alone BWS store on the other side of Tapley's Hill Road and the other is a BWS drive through store attached to the Hendon Hotel 500m to the South of the shopping centre.

The Ethos report submits that, despite these other outlets in close proximity, the proposed outlet will be an occasional destination for many residents within the locality in order to "meet their bulk buying or specialised product needs unable to be adequately met by their local bottle shop." The report provides a general statement that "traditional bottle shops tend to have a greater emphasis on small convenience shopping trips." Whereas large format stores "are better suited to larger bulk purchases...or for specialised hard-to-find products" and that they have "destinational appeal in their own right."

The objector relies on the decision in *Hove Sip n Save* [2021] SALC 7 to support their submission that, given there are already 15 other comparable liquor outlets in the locality, there is already an adequate supply of liquor outlets, availability of one-stop convenience and extensive ranges already on offer in the locality.

The applicant submits that Hove can be distinguished as the circumstances and facts surrounding Hove are significantly different to this application in that Hove was an existing shopping centre with established shopping behaviours, whereas the proposed outlet will form part of a brand new shopping centre of such scale that the DAA report is of the opinion that it will change shopping behaviours in the area, and result in a change in expectations amongst the community. They also note that the proposed outlet and adjacent Foodland in this application will be much larger than the proposed outlet and existing shopping centre in *Hove*.

The applicant also submits that there is not an adequate facility that will fulfill the need for one stop shopping within 2km and on the same side of the road, as was the case in *Hove*, nor is there an adequate supply of large format stores in the locality.

Whilst the circumstances in *Hove* may not be identical to this application, I am of the view that the principles established in *Hove*, in relation to preventing proliferation of bottle shop selling the same products within close proximity of each other, are relevant to this application. As noted previously, there is an existing stand-alone bottle shop immediately adjacent to the proposed outlet. Further, there are a large number of other takeaway outlets

within the locality, including three outlets contained within shopping centres, all within 2.5km of the proposed outlet.

#### *Convenience and one stop shopping*

Whilst not explicitly provided for in the Community Impact Guidelines, I note that in a number of recent matters before the Licensing Court, the Court has placed significant weight on the issues of convenience and one-stop shopping when determining whether an application is in the community interest. The applicant has included these considerations in their CIR and therefore it ought to be considered.

The applicant submits that the proposed outlet will provide convenience to the community in two ways:

1. providing one-stop shopping in the new shopping centre, which they submit there is an expectation amongst the community that this is what the centre will provide.
2. providing a large format liquor store for the community within a reasonably convenient drive-time as there is an expectation that is not currently being served.

Both of these matters require in depth analysis as they play a predominant role in the CIR and the objector's submissions, so I will deal with each one separately.

The Ethos report notes that "a contemporary feature of the retail sector which is often reflected in shopping centre design and leasing activities is the co-location of liquor stores and supermarkets." The applicant also notes that the principle of convenient one-stop shopping is well accepted by the Courts.



To support their submission that there is an expectation and need for one-stop shopping in the new shopping centre, the applicant relies on the results of the DAA survey, which showed that:

- 82% of respondents expect to use Hendon shopping centre
- 60% supported the application, and this rose to 67% for those who purchased takeaway liquor in the last 12 months
- 66% thought it would create good competition, 61% said it would be convenient to shop there, 56% thought it made sense to have a liquor store there, 55% thought store would provide good range and choice.
- Only 22% said they have concerns about the application. DAA note this is lower than typically experienced in such surveys.
  - The most common concerns were enough liquor stores in the area already (7%) and that competition would be bad for existing stores (7%)
- The most used current supermarket of those surveyed was located in the West lakes shopping centre (2.35kms away from the proposed outlet).

The objector disagrees that the proposed outlet will offer one-stop shopping on the grounds that the adjacent supermarket will not be operated by the applicant, and therefore there will be no loyalty system between the proposed outlet and supermarket; the DAA survey results do not reflect that many respondents anticipate using the centre regularly; and that one-stop shopping is already provided for at West Lakes Mall.

I consider the proposition put forward by the objector that it cannot be considered one-stop shopping due to the supermarket being operated by a different entity to be a weak argument. Ultimately, if a resident requires both supermarket products and liquor products and they are able to get them at the same location, I'm not satisfied that the absence of a loyalty program between the two businesses would stop them from doing so and result in them driving elsewhere to get their liquor products. I agree with the response put forward by the applicant that ownership has never been a limitation on the principle of one-stop shopping.

The objector submits that the DAA survey indicates only 35% of respondents expect to use the shopping centre once a week. They also point to portion of respondents who held concerns regarding the grant of the application. I note that, whilst only 35% expect to use it at least once a week, overall 82% expect to use the centre at some frequency. I also note that, while the survey has identified that some respondents hold concerns regarding the grant of the application, the author notes that the level of concern is still lower than what is typically experienced in surveys of this nature, and the results also showed that persons who do not purchase takeaway liquor are more likely to have concerns.

Whilst I appreciate that some residents may have concerns regarding the grant of the application, they do appear to be the minority, and the majority are supportive of the application due to the convenience it offers and the ability for patrons to undertake one-stop shopping. The commentary provided by the author suggests that there is always a small portion of the public who hold concerns about liquor in the community, however the reality is that liquor is present in the community and needs to be available to meet the demands of the community.

The objector also submits that the applicant already offers one-stop shopping at the West Lakes shopping centre, where they operate a Liquorland adjacent to a Coles Supermarket, which is only 2.35km away from the proposed outlet. Further, they submit that one-stop shopping is already catered for at this location due to the BWS store directly across the road.

In terms of the issue of proximity of the two outlets, the applicant refers to the decision of the Commissioner in *Liquorland Norwood*, in which a packaged liquor sales licence was granted in circumstances where an existing bottle shop was located on the other side of the road to the proposed outlet. In this matter the proposed outlet was to be located in the heart of a shopping and restaurant precinct, being The Parade. It was also noted that, whilst there was easy access for pedestrians between the two sites, given the nature of The Parade it would be challenging and inconvenient for customers undertaking their weekly shopping at the mall to access the existing outlets on the other side of the road in their vehicles. The expert reports provided detailed information surrounding the vehicle access between the two sides of the street and noted that The Parade acts as a barrier between the two sides.

Whilst the expert reports in this application note that Tapleys Hill Road is a major arterial road carrying approximately 22,300 vehicles per day, and state that it would be inconvenient for customers to access a store on the other side of a major arterial road, there is no further information provided about why this is the case. The surrounding area is retail/commercial and light industrial and is different to The Parade in that respect. I'm therefore of the view that this application can be distinguished from *Liquorland Norwood* and I am not satisfied that it would be inconvenient for customers undertaking their shopping at the Foodland Supermarket to either cross the road by foot or in their vehicle to obtain their liquor products.

The applicant submits that the proposed outlet would also offer convenience to the community by providing access to a large format liquor store in a locality where one does not yet exist.

Although I have previously stated that I am of the opinion that the proposed outlet should not be considered a large format store I will nevertheless consider this proposition as if it was.

The applicant's submission is supported by the DAA survey result which showed that the Dan Murphy's store at Welland Plaza (which is outside the locality) was the most commonly used liquor store by 25% of respondents and the main liquor store used by 20% of respondents who reside within the locality. The DAA report contends that these results indicate that there is currently a gap in this respect that is not being met.

The applicant refers to the matter of *First Choice Liquor St Marys* [2015] SALC 1 to support their statement that the expectation and role large format stores have in the community is well established. I note in this matter the Honourable Judge Gilchrist noted:

*By reference to contemporary community standards in my view members of the public now expect to have available to them reasonable access to a large format destination store offering a vast array of liquor products at the competitive prices as part of the range of takeaway facilities servicing their needs for takeaway liquor.*

It is worth noting that in this particular matter the application was ultimately dismissed as the applicant failed to satisfy the Court that there was a need for the licence, as was the test at the time. It was further noted that even if they had met this test, the application would have been refused on public interest grounds. The Court held concerns that the granting of a large format liquor store could hold the potential to result in the public having less choice, not more, due to the potential for it to adversely affect other enterprises in the locality, including bottle shops attached to Hotels.

With regard to the current application, I note that there are already four large format liquor stores just outside the locality, one of which is already being used as the main liquor store for residents within the locality. Each of these large format liquor stores are between a 10 to 15 minute drive from the proposed outlet. As the expert reports noted, due to the nature of large format stores, which have "destinational appeal in their own right", customers are willing to travel further to attend such stores, which is demonstrated in the DAA survey results which showed a number of residents are already travelling outside the locality to attend a large format store.

Given it has been suggested that the proposed outlet would be used primarily as an "occasional destination", rather than for convenience, which the experts contend is the role typical bottle shops play, there does not appear to be a need for "convenient" access to large format stores and therefore needing to drive 10 to 15 minutes to access should not be considered unreasonable.

Further, I note from the decision in *First Choice St Mary's* that in any event, it appears the Court did not consider convenient access to a large format store to trump the public interest in ensuring there is not a proliferation of large format stores which would ultimately result in less choice for the consumer. Even if I was to find there was a need for convenient access to a large format store in the locality, the question would then become whether it's in the public interest to have 5 large format liquor stores within 10 to 15 minutes of each other.

### **Is the application in the community interest?**

Determining whether or not the grant of the application is in the community interest is an evaluative exercise that involves weighing the benefits and positive aspects that can be expected to flow from the grant of the application against any negative or harmful impacts that may be expected to arise from the grant of the application.

There have been no significant concerns identified in relation to the potential impact the granting of the application will have on the amenity of the area or the harm it may pose to the community and in particular at-risk groups that would outweigh these benefits.

The application has support from local council, SA police and the community (as evidenced through the DAA survey). In contrast, the application did not receive any submission from local residents, the only submission received was from the AHA.

In terms of the negative impacts of the application, I am of the view that the existing outlets in the locality, in particular the BWS bottle shop across the road, weaken the submissions put forward by the applicant as to why their application ought to be considered in to be in the community interest. In terms of meeting a need for one-stop shopping, the existing BWS liquor outlet across the road provides an option for customers of the new shopping centre to also obtain their liquor products in the same trip. This existing BWS liquor outlet is of a similar nature to the proposed outlet, in that it is a stand-alone liquor store that is larger than your typical bottle shop, so the proposed outlet would not be offering anything customers don't already have access to directly across the road.

In addition, there are three other shopping centres within the locality which already offer one-stop shopping, being Port Adelaide Plaza, St Clair Village and West Lakes shopping centre. I note that all three of these liquor outlets are Liquorland's, and are operated by the applicant.

In terms of the community's access to convenient take away liquor, I am satisfied that this expectation is being sufficiently met. There are a variety of different outlets in the locality, depending on how people prefer to purchase their liquor. There are a number of drive thru facilities, two stand-alone outlets with their own car parks (Fassina Pennington and BWS Royal Park) as well as multiple options to purchase liquor from within a larger shopping centre.

Having considered all of the information before me, and in particular that the application would not create convenience or one-stop shopping for the community (as these are already present) I am not satisfied that the granting of this application is in the community interest.

Although, having found that the application is not in the community interest, I think it is still prudent to consider whether the granting of this application would nevertheless be in the public interest, particularly given the decision of *Hove* and number of existing liquor outlets in the locality.

As noted in *Hove*, "it is not in the public interest for there to be a proliferation of bottle shops selling essentially the same range of liquor within short compass of each other." The Court considers this to still be relevant, even though the needs test has been abolished.

I do not consider it to be in the public interest to allow a liquor outlet to be granted directly across the road from an existing liquor outlet with similar offerings. Both stores would be stand-alone liquor outlets that are larger than your typical bottle shop. Whilst I accept that the proposed outlet would be larger than the existing BWS liquor outlet, ultimately all liquor outlets, irrespective of their size, are meeting the demand of the community to be able to purchase liquor products, and are adding to the availability of liquor in the community and therefore the potential harm alcohol consumption can cause to the community.

If this application was granted, on the grounds that it was slightly larger or it did offer a slightly different offering to the existing BWS liquor outlet, I think it is reasonable to be concerned that doing so could create an undesirable precedent of allowing larger stores to be granted in locations where an application for a smaller store would not, purely because of their size, potentially causing the concerns identified by the Court in *First Choice St Mary's* to come to fruition.

Ultimately the application is refused on the grounds that I am not satisfied it is in the community interest. However, even if it had satisfied the community interest test, it would have been refused on public interest grounds.

Under Delegation from the Liquor and Gambling Commissioner



Ashleigh Hughes  
Manager, Liquor & Gaming  
22 Mar 2023