

**BWS Mount Barker (Application No.204087)**

***Application for Packaged Liquor Sales Licence***

Endeavour Group Limited (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at 3-5 Walker Street, Mount Barker SA (**the Site**), to be known as BWS – Beer Wine Spirits (**BWS Store**).

As part of the application the Applicant has submitted a Community Impact Report (**CIR**), with supporting attachments, prepared by expert town planner Graham Burns from MasterPlan. It is the content of the report and expert evidence, submissions made to the Licensing Authority (**the Authority**), along with submissions lodged on behalf of Chelsea Bay Pty Ltd, Takma Pty Ltd and Hutchinson Hotel Investments Pty Ltd, which the Applicant notes are the licensees of Gray's Inn and Richie's Tavern (**the Objectors**) opposing the grant, and submissions and evidence in reply by the Applicant, that my decision is based on.

For ease of reference the following submissions and documents are referred to throughout the decision with the abbreviations noted below:

- Applicant's Community Impact Report, dated 7 September 2020 (**CIR**)
- Applicant's Covering Letter and Submissions dated 15 September 2020 (**A1**)
- Chelsea Bay Pty Ltd, Takma Pty Ltd and Hutchinson Hotel Investments Pty Ltd undated Submissions received on 26 October 2020, objecting to the application (**Ob1**)
- Applicant's Submissions in reply dated 26 November 2020 (**A2**)
- Objectors' Further Submission dated 2 February 2021 (**Ob2**)
- Applicant's Further Submissions, dated 5 March 2021 (**A3**)
- Letter from the Australian Competition and Consumer Commission (**ACCC**) to the Liquor and Gambling Commissioner dated 23 June 2021 (**ACCC Letter**)
- Submission of Associate Professor Michael Livingston dated 5 July 2021 (**Professor Livingston Submission**)
- Submission of the Royal Australasian College of Surgeons dated 23 July 2021 (**RACS Submission**)
- Submission of Australia's National Research Organisation for Women's Safety dated 30 July 2021 (**ANROWS Submission**)
- Applicant's Submissions in reply to Professor Livingston, RACS, and ANROWS dated 5 October 2021 (**A4**)

This application may only be granted if the Authority is satisfied that the grant of the application is in the community interest. In determining this application under section 53A(2) of the *Liquor Licensing Act 1997* (**the Act**), I must have regard to:

- 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; and
- the nature of the business conducted or to be conducted under the licence (as prescribed).

I must also apply the Community Impact Assessment Guidelines (**the Guidelines**), which state: "*The onus is on the applicant to satisfy the licensing authority that the grant of the*

## OFFICIAL

*application is in the community interest and to provide relevant evidence and submissions to discharge this onus.”*

The Guidelines generally impose an obligation upon an applicant to include with the application a community impact submission that, if relevant, is expected to address a range of matters, including: the applicant’s products/services in terms of key features and potential customers; business/professional experience, in particular relevant knowledge, experience and competency in relation to the service of liquor; general description of facilities and services; relevant construction details (e.g. materials, finishes, acoustic treatment, etc.); details of any food, including menu; liquor services (e.g. bar) and range of liquor; types of entertainment; types of accommodation; a statement as to whether the community supports the proposed business, including providing evidence of such support; and a statement as to why the granting of the application is in the community interest.

Applicants are also required to provide, where applicable: a map and report regarding the locality generated through Consumer and Business Services (**CBS**) Community Impact Portal; a business plan/plan of management; and a site or property plan, floor plan and/or photographs/artists impressions of the site/building.

Pursuant to section 3(2) of the Act, when deciding whether or not to grant this application, I must have regard to the objects of the Act as set out in section 3(1) of the Act.

Section 3(1) of the Act provides that:

(1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—

(a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and

(b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and

(c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and

(d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

(1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—

(a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and

(b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and

(c) the adverse effects on a person’s health; and

(d) alcohol abuse or misuse; and

## OFFICIAL

(e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

The Applicant must also satisfy the Authority that the pre-requisites in s 57 of the Act have been met, in relation to matters such as: the suitability of the premises; the potential for them to cause undue offence, annoyance, disturbance or inconvenience to nearby residents, workers and worshippers in the vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools in the vicinity of the premises; and whether the appropriate approvals, consents and exemptions, in respect of the proposed premises have been obtained.

Additionally, s 53 of the Act gives the Authority “*an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)*”, and s 53(1a) provides that the authority must refuse an application if it is satisfied that granting the application would be contrary to the public interest.

Section 53(1b) of the Act requires that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the objects of the Act.

The Applicant has significant experience in operating liquor licences and packaged liquor outlets, and currently operates over 1500 licences across each State and Territory in Australia. The primary brands of the business are BWS and Dan Murphy’s packaged liquor outlets (4.1, CIR). The Applicant’s various businesses serve over 900 million customers each year and Woolworths directly employs over 205,000 people, along with many thousands more indirectly through its supply chains (4.4, CIR).

### **Background / Nature of the Proposed Offering**

The Woolworths Supermarket at 3-5 Walker Street, Mount Barker (**Supermarket**) is a full line supermarket that has been in operation for over 30 years. The Applicant submits that the Supermarket is currently the best performing Woolworths Supermarket in South Australia in terms of turnover and average basket spend (4.1.1 – 4.1.2, A1).

The Applicant contends that the proposed offering will provide customers with a one-stop-shopping experience where they “*will be able to purchase all of their grocery and drinks needs at one convenient location*” (3.1, CIR).

If constructed as proposed the BWS Store will be approximately 160 square metres and will be a separate tenancy to the Supermarket, but there will be an operational link between the 2 land uses. Stock for the BWS store will be delivered to the Supermarket loading bay (accessed via Stephens Street) and will then be distributed from the Supermarket’s back of house and via the front doors of each tenancy. Consequently, no s 38 separation issue arises in respect of this application, as the proposed BWS Store is physically separate from other commercial premises in the sense required by the Act.

The Site currently comprises the Supermarket (4,015 square metres total floor space), with approximately 24,300 transactions per week, in addition to a number of other smaller tenancies, including: Mount Barker Newsagency; Noodle Box; Our Place Café; Nova Hair and Beauty; Mount Barker Fresh Markets; The Octopus’s Garden (Seaford); Community Living Australia; Mount Barker Chicken and Seafood; Dentist; Café Brunelli Mount Barker and is supported by 351 car parking spaces (**the Shopping Centre**) (8.0 – 8.5 CIR).

## OFFICIAL

MasterPlan note that the tenancy operates as a 'shop' within existing use rights relevant to the original development of the Shopping Centre, and that the packaged liquor sales licence outlet is defined as a 'shop' in accordance with Schedule 1 of the *Development Regulations 2008* and that consequently "no further consents or approvals required under the *Development Act 1993*" (7.1, CIR).

The Applicant has provided an indicative Stock List Summary and notes that BWS Stores have an average of approximately 1800 lines of liquor, with customers having access to standardised products in the market, in addition to imported and local brands (4.2 to 4.3, CIR).

The Applicant submits that the proposed BWS Store will be a new, modern, safe and clean store with a comprehensive range of quality liquor and associated products and services, including an extensive range of beer, wine and spirits (9, A1 and 21.9, A1).

### Locality

The Guidelines provide a guide for applicants in relation to the 'locality' applicable to their application, and state 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 Guidelines suggest as a guide that the locality of licensed premises outside of the metropolitan will be the area within a 5km radius of the proposed offering:

***Outside the Metropolitan Area:*** With regards to country cities, town or communities, unless remotely located, the locality of the premises is the area within a 5km radius of the site of the relevant premises. (pg6, Guidelines).

Expert evidence in this matter, provided by MasterPlan on behalf of the Applicant states that the 5-kilometre radius set by the CBS portal is appropriate to adopt, whilst noting that one could justifiably extend it to a 6km radius to capture the towns of Littlehampton, Nairne, Blakiston, and Hahndorf given the customer drawing power of the Mount Barker Regional Town Centre Zone (9.0 – 9.2, CIR).

MasterPlan identifies the immediate locality as containing the Mount Barker town centre, and notes that it comprises various commercial, institutional and educational land uses, and is encircled by the low-density suburban areas of Mount Barker and Littlehampton, which are flanked by rural Adelaide Hills properties (9.3, CIR).

Having considered the evidence I am of the view that a 5km radius from the proposed site is appropriate to define the locality and agree with the locality as defined by the Applicant. The Objector does not appear to take issue with the locality as identified by MasterPlan but notes the findings of Gilchrist J in the matter of *BWS – Mount Barker* [2016] SALC 33 at paragraph 30 where he found that all of the takeaway facilities in Mount Barker, the Sip 'n' Save bottle shop at the Great Eastern Hotel at Littlehampton, and the Millers Arms Hotel at Nairne "have to be considered" as part of the locality (12, PT1).

The population of the locality, as per the CBS portal is 109,822 persons. MasterPlan note that this figure utilises SA2 collector districts, and go on to provide a more accurate population figure for the locality of 20,246 persons by utilising ABS data comprising SA1 districts (9.8, CIR).

## OFFICIAL

MasterPlan observe that the township of Nairne has a population of approximately 5,000 persons, and although the town is beyond the 5 km locality radius, at the time of writing their report did not have a PLSL outlet, and is consequently reliant on the major centre of Mount Barker for this service (9.9, CIR). MasterPlan do acknowledge the decision by the Licensing Court in *KSM Liquor Pty Ltd* (2019) SALC 1 granting a PLSL outlet in Nairne, which once constructed would provide a one-stop-shop opportunity in Nairne, and I note that store is now trading which would reduce the reliance of people residing in Nairne on packaged liquor stores located in Mount Barker.

MasterPlan refer to the 30-Year-Plan for Greater Adelaide and provide a map which outlines the location and hierarchy of activity centres within the Greater Metropolitan Area (10.1.1 & Map 2, CIR).

Mount Barker is one of 6 Adelaide Metropolitan Regional Centres, and one of 8 within South Australia, and MasterPlan describe it as a strategically important centre given its distance from other Regional Centres (10.1.2, CIR).

MasterPlan state the following in relation to Mount Barker regarding the 30-Year-Plan:

Regional Centres are identified in The 30 year Plan as being the locations for '*the majority of Greater Adelaide's urban growth*' (P1 on page 42), and to '*increase average gross densities of development within activity centres and transit corridor catchments from 15 to 25 dwellings per hectare to 35 dwellings per hectare*' (P3 on page 42). The Regional Centre of Mount Barker is recognised in The 30 Year Plan as being a focal point for population growth and an area of increasing residential densities (10.1.3, CIR).

MasterPlan note that the *Ministerial Mount Barker Urban Growth Development Plan Amendment* (2010) rezoned a large portion of rural land surrounding Mount Barker and resulted in large areas of land being incorporated into the Residential Neighbourhood Zone (10.3.1 – 10.3.2, CIR), and provide commentary about population predictions, submitting that there will be population growth in the "statistically significant designated areas" which are expected to support a population growth range between 9.29 percent and 611.83 percent to 2036" (10.3.7, CIR).

MasterPlan refer to the District Council's *Mount Barker Town Centre Strategy Master Plan*, prepared by GHD on behalf of the Council in 2012 (**the Town Centre Strategy**), (10.2.1 – 10.2.3, CIR). MasterPlan submit that the Town Centre Strategy identifies that "*[the] town centre is expected to experience 2-3 times the economic activity and new uses than previously experienced*" (at pg12 of the Report; 10.2.2, CIR).

MasterPlan summarise the implications of the predicted population growth and impact on the Mount Barker Town Centre as follows:

The very high population growth predictions within the Mount Barker Growth Area will result in a significant increase in the customer base for the Mount Barker Town Centre. The District Council of Mount Barker are very aware of this anticipated demand and continues to progress the Mount Barker Town Centre Strategy.

The Shopping Centre containing the Woolworths supermarket is strategically located within the 'Regional Business / Retail Core Precinct', as outlined in the Mount Barker Town Centre Strategy, where ongoing development is envisaged and encouraged.

The proposed Packaged Liquor Licence Sales outlet within the shopping centre will provide a conveniently located one stop shop opportunity for existing residents, and

## OFFICIAL

the increasing number of residents anticipated to move into the locality. The high population forecast will provide greater demand for the opportunity to purchase supermarket items and alcoholic beverages at one convenient location. (10.4.1 – 10.4.3, CIR).

The Objectors take issue with the commentary on, and submissions about, likely population growth in the locality:

Any references to predicted population growth are not to be afforded any significant weight – as has been noted in previous decisions of the Authority, licensing is based on current, not future, population numbers (92, Ob1).

### **Other Packaged Liquor Outlets in the Locality**

The Objectors note the findings of Gilchrist J in the matter of *BWS - Mount Barker* [2016] SALC 33 at [30] (***BWS Mount Barker 2016***) where he found that all of the takeaway facilities in Mount Barker, the Sip 'n' Save bottle shop at the Great Eastern hotel at Littlehampton and the Millers Arms Hotel at Nairne “have to be considered” as part of the locality (12, PT1).

MasterPlan have provided analysis in relation to the current availability of take away liquor in the locality as follows:

- 2 PLSL outlets
- 5 General and Hotel Liquor Licences

This is relevant when calculating the liquor licence density for the locality in light of any ‘proliferation’ concerns and is considered in more detail below.

MasterPlan note that 4 of the 5 General and Hotel licences are clustered within the Mount Barker Town Centre in close proximity to the proposed offering, with the 5<sup>th</sup> outlet, the Great Eastern Hotel being located approximately 2 kilometres in a direct line to the north-east (11.3.19 – 11.3.20, CIR).

MasterPlan submit that whilst the Great Eastern Hotel has a drive-through liquor sale option for customers, that it is not convenient to access it from the Mount Barker Town Centre as it requires travelling over the South Eastern Freeway via the highly trafficked Adelaide Road, a main thoroughfare from Mount Barker to Adelaide (11.3.21, CIR).

MasterPlan describe the location of the other 4 General and Hotel licences in the locality, including Grey’s Inn; Barker Hotel; Richie’s Tavern (Urban Cellars, also known as Pulpit Cellars); and the Wallis Tavern/ Auchendarroch House.

MasterPlan note that there is a Dan Murphy outlet approximately 600 metres in a direct line to the south-east of the proposed outlet (800 metres by road), and that there is a Cellarbrations located approximately 1.75kms in a direct line to the south-southeast (2 kilometres by road).

MasterPlan submit that the current absence of a packaged liquor store in the shopping centre containing the Woolworths supermarket “*results in customers seeking the convenience of purchasing liquor as part of the daily or weekly shop not being able to do so at this large-scale shopping centre as part of their one-stop-shop experience*” and “*there is a community interest benefit in enabling the purchase of household groceries and items and liquor supplies in one location, which could be realised by this proposal*” (11.3.32, CIR).

## OFFICIAL

MasterPlan go on to contend that the proposed outlet's "*location in a large, well established and well patronised shopping centre represents an appropriate location to provide convenience shopping within an existing centre. The offer of a vastly more convenient shopping experience is increasingly considered to be a positive community benefit, without attracting a negative social or amenity impact given the characteristics of the locality*" (11.3.33, CIR).

The Objectors note the comments of Gilchrist J in *BWS Mount Barker 2016* as to packaged liquor outlets in and around Mount Barker, namely:

- At paragraph [133] – "*I find that the Pulpit Cellars is a very good bottleshop that has a very good range of liquor on offer. I find that it complements the range on offer at the BWS store in Mount Barker. I expect that it will continue to do so when the BWS store becomes a Dan Murphy. I find that the Thirsty Camel at Grays Inn is a better than fair average quality drive through bottleshop with an adjacent walk in area*".
- At paragraph [25] – "*On the outskirts of Littlehampton there is a Sip 'n' Save drive through and walk in bottleshop that forms part of the Great Eastern Hotel. It is a little less than 3 kilometres from the proposed store.*"
- At paragraph [26] – "*to the north east of Mount Barker is the town of Nairne. I the main street of Nairne there is a bottleshop at the Millers Arms Hotel. It is about 8 kilometres from the proposed store.*"

The Objector notes that there is a new packaged liquor store at Nairne located adjacent to a new supermarket facility, that the new Cellarbrations at the IGA Supermarket in Mount Barker has also commenced trading, and that the former BWS store has been converted to a Dan Murphy, which is in the town centre. The Objector refers to paragraph 140 of *BWS Mount Barker 2016* where His Honour found that "*in my view, the evidence, including the evidence of needs witnesses, establishes that within the town centre of Mount Barker there are 2 very good quality bottleshops and that the town centre has ample takeaway liquor facilities*".

The Objector notes that there are at least 3 outlets in the locality that provide a 'one stop shop' and rejects the assertion by MasterPlan at 11.3.33 of the CIR that the proposed offering will provide a vastly more convenient shopping experience (35, PT1).

### **One Stop shopping/ convenience**

The Applicant has provided some analysis and submissions in relation to one-stop-shopping and customer convenience in the locality, summarised below:

- There is a Cellarbrations outlet approximately 1.9km by road from the proposed Site, which is co-located with an IGA supermarket. The Applicant notes that there are no other specialty tenancies surrounding this premises and that the IGA supermarket is not a full-line supermarket (23.1.2, A1).
- The Licensing Court has approved a Cellarbrations bottleshop at Nairne which is 8-9 kms away from the proposed BWS Store, co-located with a Foodland supermarket (23.1.3, A1). As noted by the Objectors, this bottleshop is now operating (32, Ob1).
- Urban Cellars (also known as Pulpit Cellars) at Richies Tavern "*is the only outlet within the Regional Town Centre Zone which is located adjacent to a supermarket (Aldi)*" (23.2.1(c), A1), and that the proposed offering would "*complement the existing Woolworths Supermarket offering and provide the public with increased choice in*

## OFFICIAL

*terms of a one-stop shopping experience within the locality. In this regard it is important to observe that there are currently no packaged liquor outlets situated adjacent to a full-line supermarket in the locality” (23.3.5, A1). The Applicant also notes that Aldi is not a full line supermarket and is considerably smaller than the full-line Woolworths supermarket at the subject Centre.*

I note that this submission is no longer accurate given my approval of Liquorland’s PLSL application late last year, with Liquorland being co-located with a full-line Coles supermarket in the Town Centre Zone.

In terms of one-stop-shopping the Objectors note the comments of Gilchrist J in *BWS Mount Barker 2016* at [151] and [152], and submit that this would also apply to shoppers at the Woolworths supermarket (36-37, Ob1):

*Many of the residents of the locality who use the centre would on occasions find it necessary to go to places like the Mount Barker Central or outlets elsewhere in Mount Barker to satisfy some of their retail and other needs. In other words, venturing into other parts of the regional town centre is something that the patrons of Woolworths Centre would routinely have to do. [151]*

*I cannot approach my consideration of this application from the premise that if I granted the application, for most, the Woolworths Centre would be a one stop shop. [152]*

The Objectors also refer to the observation by His Honour at [153] of the *BWS Mount Barker 2016* decision that a substantial number of residents in Mount Barker have a daily commute to and from Adelaide and would pass by, or go near, various takeaway liquor facilities, and that:

*My impression is that travelling within the locality by car is relatively easy. For those shopping at the Woolworths Centre, the times and distances involved in accessing the takeaway facilities at the BWS/Dan Murphys, the Pulpit Cellar and the Thirsty Camel at Gray’s Inn are, by contemporary standards, not great. [154]*

In light of this I find that the residents of Mount Barker and those living in adjacent areas have many and varied takeaway liquor facilities to choose from. [159], (38-41, Ob1).

The Objector also cites the comments Gilchrist J made at paragraph 44 of the *BWS Mount Barker 2016* decision as follows:

*If there was evidence that there were a greater number of such vulnerable persons in this community as opposed to the general population or that this locality was already awash with takeaway liquor facilities, such matters might tip the balance in determining that it is not in the community interest to grant the application.” [44]*

The Objector submits (43, PT1) that:

*The number of takeaway liquor outlets as referred to in the BWS - Mount Barker decision and the quality of them sets apart this application from the Liquorland Park Holme factual matrix.*

The Objector argues that liquor can already be purchased conveniently at many other outlets in the locality, and in light of this, any additional convenience offered by granting this

## OFFICIAL

application “*is of considerably less relevance and significance to the community interest.*” (45, Ob1).

In response, the Applicant submits that having regard to the Court’s comments in *Park Holme* at [44], “*there is no evidence in this application of any greater number of such vulnerable persons in the community as opposed to persons in the general population. Further, the area is not ‘already awash’ with take away liquor facilities*” (11, A2).

The Applicant rejects the notion that the number and quality of take away liquor outlets in Mount Barker sets it “apart” from the circumstances in *Park Holme* and submits that this is a “needs” test type submission that the Court has unequivocally addressed (and rejected) in *Park Holme* at [46], (discussed at 8, A2).

I am concerned about the issue of proliferation and do not see it as desirable from a public policy perspective for there to be a packaged liquor store aligned with all (or most) shopping centres across the State. That said, each application must be assessed on its own merits. While it is clear that the locality presently has ample packaged liquor options available for consumers, I agree with the Applicant that the locality cannot be said to be “awash” with packaged liquor outlets, and am of the view that the application should not be refused on the basis of liquor licence density considerations alone. That said, I am also mindful of Gilchrist J’s observation in *Hove* [at 139] that:

*“The legislature has made a clear policy decision not to go down the path that other jurisdictions have taken in connection with allowing the wholesale alignment of take away liquor facilities with supermarkets. In conformity with this, and the views previously expressed by this Court and the Supreme Court that it is not in the public interest for there to be an over-supply of retail liquor outlets.....”*

### **ACCC response to invitation to provide a submission**

On 9 June 2021 I wrote to the ACCC referring to an earlier letter dated 21 December 2020 that I had received from the ACCC and inviting the ACCC to make a submission outlining any competition concerns in relation to the interests of consumers that may be relevant when determining whether the application is in the community interest or has public interest implications.

Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital Division of the ACCC responded to my request by letter dated 23 June 2021. Mr Leuner advised that “*the ACCC does not propose to make a written submission*” as it does not have any jurisdiction or authority in relation to the current Liquorland and BWS PLSL applications.

Mr Leuner goes on to say:

*“However, in principle ACCC acknowledges that there is the potential for competition concerns to be raised if Coles and Woolworths are able to expand further via the grant of new liquor licences in local retail markets where they already have a significant presence.*

*We also recognise that over time, the granting of new licences to Coles and Woolworths could undermine the competitiveness and viability of independent liquor retailers, including by:*

## OFFICIAL

- *saturating the market and reducing sales for independent retailers;*
- *raising barriers to entry and/or expansion, such as marketing costs; and/or*
- *increasing Coles and Woolworths' relative buying power at the wholesale level."*

Mr Leuner sets out the following factors that the ACCC considers in its assessment of competition in local retail markets that are discussed in detail in the ACCC's merger guidelines:

- The appropriate geographic boundary of the market
- Market concentration in the local market
- The closest competitors to the new site
- The degree of competitive constraint provided by independent retailers on Coles and Woolworths liquor stores
- The extent of barriers to entry to further stores opening in the area.

The Applicant provided submissions in reply to the effect that the ACCC material is not relevant to the determination of the application and that I could place no weight on this material when determining the application.

I consider as general propositions that it is desirable to have a competitive market for consumers and undesirable to have market saturation or market dominance by any one licensee. To whatever extent that matters of competition may be relevant to determining if the grant of a PLSL application is in the community interest or in balancing public interest considerations, I note that the Applicant currently operates 1 other packaged liquor store in the locality, Dan Murphy,

The proposed BWS store is a very different offering to Dan Murphy, and I do not hold concerns that the grant of this application will result in diminished competition, market saturation or market dominance by the Applicant in the locality and therefore place no weight on the ACCC material for the purpose of deciding whether the grant of this application is in the community or public interest.

### **Potential Harm**

The Applicant has submitted that there are "*little (if any) negative impacts associated with this application*"; that it has adequate policies and procedures in place to address any perceived harm associated with the application (17, A1), and refers to 11.2 of the CIR in support of this submission, as outlined below.

MasterPlan do not consider:

- that the proposed site would be a congestion area for school children (11.2.3, CIR)
- that there is any risk of minors being exposed to licensed products.
- that there are any cultural risks associated with the application or that it will result in harm to places of worship (11.2.5, CIR).
- that there are any risks to aged care residents given there are no aged care facilities in close proximity to the site, and to the contrary that the proposed offering will benefit certain residents of aged care facilities (11.2.8, CIR).

The Applicant submits that the proposed BWS Store will not be visible to any community buildings or facilities and that this will further mitigate any perceived risk to potential 'at risk' groups (18.2, A1).

## OFFICIAL

South Australia Police (**SAPOL**) and Mount Barker District Council have not objected to the application.

The Applicant wrote to 53 potential stakeholders and interest groups and only Drug and Alcohol Services SA (**DASSA**) responded on behalf of SA health, in relation to the application.

The Applicant notified the Mount Barker branch of Drug and Alcohol Services, located around 2.2km to the south-east of the Site, of the application, and received a response from DASSA. The Applicant states that no specific response or any particular concerns were raised by the relevant branch/ facility itself, and that given the distance between this facility and the proposed Site, the Applicant does not anticipate that the proposed BWS Store will lead to any increase in harm or risk to persons attending this facility (18.3, A1). Additionally, the Applicant submits that it takes this issue very seriously and points to its comprehensive range of policies and procedures to mitigate against this risk (11.2.9 and 11.2.15, CIR).

In addition, the Applicant submits that in relation to BWS stores generally, the Licensing Court has accepted on a number of occasions that there are no issues under s 57 of the Act as to the suitability of the premises; the potential of them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; or any prejudice to the safety or welfare of children attending nearby kindergartens and schools; and whether the appropriate approvals, consents and the like, pertaining to the proposed premises have been granted (19.1, A1), and cites the following cases in support: *BWS Seaford* [2015] SALC 19 at [6]; *BWS Mt Barker* [2016] SALC 33 at [7], *BWS Woodcroft* [2016] SALC 35 at [11], *Woolworths Liquor BWS Arndale* [2014] SALC 14 at [11], and *Woolworths Limited* [2013] SALC 23 at [7].

The Applicant states that in relation to its commitment to compliance issues generally, Gilchrist J made the following finding in *BSW Woodcroft* [2016] SALC 35 at [101]:

*I need not take that evidence any further. There has been consistent evidence placed before this Court to the effect that Woolworths is a very good operator or retail liquor facilities.*

Additionally, the Applicant notes that it has not been involved in legal proceedings in South Australia involving the sale of liquor to minors (19.3.4, A1).

The Applicant has identified a range of matters and risk mitigation measures to mitigate the risk of harm posed by the application, including:

- The Endeavour Group Limited's harm minimisation policies and procedures are well documented within the business's Quality Management Systems, and apply to every store Nationwide (11.2.14, CIR);
- The Applicant (by virtue of its majority Woolworths ownership) has hundreds of cumulative years of experience in operating liquor licence outlets. That experience has resulted in the implementation of extensive policies and procedures in the responsible service of alcohol, detailed staff induction and extensive training on their roles and responsibilities (refer to 11.2.15, CIR).
- Staff receive induction and ongoing training in relation to the policies and procedures including the House policy; ID 25 Policy; Secondary Supply Policy; Responsible Buying Charter; Intoxication Policy; School Uniform Policy; and Best Practice Policies and Interventions (11.2.15, CIR).
- The New Store will be designed and constructed pursuant to the Crime Prevention through Environmental Design (**CPTED**) principles of surveillance and lighting, territorial reinforcement, space/activity management and access control (19.3.6, A1).

## OFFICIAL

- MasterPlan submit that careful consideration is given to the design and layout of the store to foster natural surveillance, in order to help deter criminal activity. Additionally, the store will be fitted with a sophisticated CCTV system that incorporates up to 8 high-definition cameras and a back to base security alarm system. This system will have remote accessibility to allow compliance and loss prevention teams to access the system off site as well as enabling local approved store management access. Footage can be transferred to a USB on request from SAPOL or Licensing Inspectors (11.2.17, CIR).
- There will be internal reporting systems in place to ensure that if there are any incidents, concerns or threats, that corrective action can be taken quickly, and Endeavour Group conducts regular internal security and safety audits to ensure all stores adhere to the business' policies and procedures. If there are concerns, remedial action is taken immediately (11.2.17, CIR).
- The BWS Store will not stock items that have any special appeal to minors nor will it involve the provision of liquor in non-standard measures or the use of emotive descriptions or advertising that encourages irresponsible drinking (19.3.7, A1).
- Incident registers are maintained in each BWS store so that any incidents are recorded and dealt with efficiently and appropriately (19.3.8, A1).
- The Applicant's Management Responsibility Policy requires store managers to actively engage with any active local liquor accords (19.3.5, A1).
- The Applicant submits that its policies and procedures have proven to be successful in other trading locations and they ensure (as much as humanly possible) that liquor sold and supplied is done so responsibly (19.3.3, A1).

The locality has a lower crime rate across almost every recordable offence type compared to the State average, with the exception of 'Serious Criminal Trespass – Non Residence' (11.3.2, CIR).

The locality's total rate of crime recorded is approximately half of the State average (11.3.3, CIR).

The most common offence with the locality is 'other theft' which includes the theft of household goods, bicycles, electricity, gas or water, and petrol drive-offs, and is therefore not entirely relevant to the proposed PLSL outlet. The second most prevalent offence recorded for the locality is 'theft from shop' which is clearly more relevant. However, MasterPlan note that 'theft from shop' is significantly less than the South Australian average per population. Additionally, each BWS store is fitted with an electronic article surveillance (EAS) system, "*which permits specific electronic bottle caps to be fitted to identified higher price and (attractive to thief type products)*". Any product that has not had this bottle cap removed will trigger an alarm as the customer crosses the exit "checking" point (22.5, A1). The EAS system will reduce the risk of theft from the bottleshop and the risk of harm.

MasterPlan states that there is no evidence for the locality that identifies what proportion of crime is related to the consumption of alcohol and that there is no evidence to suggest that an additional packaged liquor sales outlet in the locality would lead to increased crime levels (11.3.7, CIR).

With regard to groups deemed to be 'at risk' for the purposes of the Guidelines: the schools and childcare centres within the locality are evenly disbursed, with no evident concentration near the proposed outlet, and the outlet is not situated in an area where young people congregate, and is not considered to represent an exposure risk for minors (11.2.3, CIR); the

## OFFICIAL

proposed outlet is not considered to present a risk to aged care residents (20.5.4, A1 and 11.2.78, CIR); the Mount Barker branch of Drug and Alcohol Services is 2.2kms to the south-southeast of the proposed outlet and is not considered to provide a risk to branch clients (11.2.9 – 11.2.10, CIR); the Minister and Commissioner have declared 2 dry areas within the locality but MasterPlan do not expect the proposed packaged liquor outlet to provide any undue impact on the dry areas given its relative separation distance (11.2.11 – 11.2.13, CIR);

The Objectors assert that the “*applicant has provided little if any real assessment or analysis of the at risk groups or sub communities within the locality and how they might be impacted*” (108, Ob1), and also question the relevance of the MasterPlan report, submitting that the author of that report “*has qualifications in planning, but not social planning, or apparently any specialist practice or policy experience in social planning, which is a more relevant area of expertise in such matters and any opinion expressed as to the important issue of liquor related harm is of limited value*” (50-51, PT1).

In response the Applicant strongly rejects the assertion that it has provided “little if any real assessment” or analysis and points to section 11.2 of the MasterPlan report. The Applicant submits that “*there is no evidence that the grant of this application will result in a worrying level of increased harm due to excessive or inappropriate consumption of liquor, within the community as a whole, or to any group within that community*” (15.1, A2), and notes that Mr Burns of MasterPlan has 30 years of experience in appearing before the Licensing Court as an expert planning witness (15.3, A2).

In my view the Applicant has appropriately engaged with and consulted with at-risk groups within the community, and I am satisfied that I can rely on and place weight on the opinions expressed by Mr Burns of MasterPlan for the reasons asserted by the Applicant (at 15 – 15.4, A2).

The Applicant submits that it takes its social responsibilities very seriously and that if operational concerns are brought to its attention, management works to resolve those concerns (19.3.3, A1).

The Applicant is a large and experienced liquor sales business, with significant resources, well trained staff and a comprehensive array of policies and procedures.

The Applicant invests in employee management and training, and MasterPlan notes that “*BWS team members undergo rigorous induction and training as to their role and responsibilities. This includes aligning with the expectations of BWS in the responsible service of alcohol, the law, internal policies and procedures and many other aspects associated with working in the drinks industry*” (4.7, CIR), and that “*team members receive regular training reminders on the responsible service of alcohol as well as product knowledge and customer service training. All team members receive on the job training and supervision to enable growth in their capabilities*” (4.8, CIR).

I have reviewed the policies contained in the CIR, including: House Policy; Management Responsibility - SA; ID 25 Policy; Intoxication Policy; School Uniform Policy; Secondary Supply Policy; and the Endeavour Drinks Group Responsible Buying charter (11.2.15 and Attachment J, CIR).

Given the high number of packaged liquor sales licence applications by Liquorland and BWS currently before the Authority, I considered that it was appropriate to call for general submissions on harm pursuant to s 78 of the Act from Associate Professor Michael Livingston (**Professor Livingston**), the Royal Australasian College of Surgeons (**RACS**) and Australia’s National Research Organisation for Women’s Safety (**ANROWS**).

### ***Submission of Associate Professor Michael Livingston***

Michael Livingston is an Associate Professor at the National Drug Research Institute, Curtin University. He says that he is currently one of the preeminent international researchers examining the relationships between the availability of alcohol, alcohol consumption and alcohol-related harm.

The aim of Professor Livingston's submission is *"to provide a broad overview of the best available current evidence on the links between alcohol-availability and alcohol-related harm to assist the Commissioner in making appropriate decisions."*

Professor Livingston notes that nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets, with this figure steadily increasing. He submits that:

*"Substantial international research literature links the density of alcohol outlets in a neighbourhood to the rate of alcohol-related problems experienced in that neighbourhood."*

Professor Livingston refers to the book *Alcohol: No Ordinary Commodity* released by the World Health Organisation which provides a general summary of the international research literature, and notes that policies aimed at regulating the physical availability of alcohol are considered to be some of the most effective policy options available to governments trying to limit or reduce harm from alcohol.

Professor Livingston sets out the findings of various international studies that focus on packaged liquor including:

- The density of packaged liquor outlets matters significantly, especially where changes in availability are dramatic, such as the introduction of beer to grocery stores in Finland and the introduction of wine to supermarkets in New Zealand.
- Episodic heavy drinking and heavy drinking by young people occur more frequently in neighbourhoods with higher densities of packaged liquor outlets.
- Packaged liquor density is associated with higher rates of public violence and other crime as well as higher rates of less visible harms including partner violence and child maltreatment, and chronic disease.

In terms of findings on the impact of packaged liquor outlets taken from Australian studies, Professor Livingston notes that: *"it is assumed in most cases (especially for off-premises outlets) that increased density means increased availability, which means increased consumption (and thus harm)."*

Professor Livingston then refers to Melbourne studies and submits that:

- There is growing local evidence linking the density of packaged liquor outlets to heavy drinking and alcohol problems.
- Longitudinal analysis of some studies showed positive associations over time between the density of packaged outlets and rates of domestic violence, general assaults and alcohol-specific disease.

## OFFICIAL

- In an average postcode, a 10% increase in the density of packaged liquor outlets would lead to approximately:
  - 1% increase in assaults recorded by police and a 0.5% increase in hospitalisation due to assault;
  - 3.3% increase in family violence incidents recorded by the police;
  - 1.9% increase in hospitalisations due to alcohol-specific chronic disease.
- The density of packaged liquor outlets at the local level was positively associated with rates of episodic risky drinking.
- Each individual outlet does not contribute to major increases in harm, however the cumulative effects of increasing availability can be substantial.

In relation to the influence of neighbourhood characteristics Professor Livingston says:

*“There is growing evidence that the relationships between outlets and harms vary across neighbourhood types. Studies from the USA have shown larger effects for outlet density in socio-economically disadvantaged areas, in areas with low levels of social disorganisation and in neighbourhoods with higher levels of public housing or industrial areas.”*

He goes on to say that similar evidence is being developed in Australia, with a suggested 2% increase in assaults and a 12% increase in family violence following a 10% increase in packaged liquor outlets in disadvantaged suburban postcodes of Melbourne.

Professor Livingston discusses 4 Australian studies that consider the influence of outlet characteristics, and summarises the evidence as follows:

*“Taken together, the evidence here is suggestive that granting licences for large chain outlets, which are likely to sell more alcohol at cheaper prices than smaller outlets will increase the risk of negative consequences in a neighbourhood more substantially than other kinds of packaged liquor outlets, although the evidence is relatively limited and remains contested.”*

Professor Livingston also considers casual pathways and notes that recent data may suggest that: *“expanding alcohol availability affects the consumption of only a small number of marginalised or heavy drinkers, while the impact on the majority of the population is limited.”*

In conclusion, Professor Livingston submits that:

*“There is a wealth of high-quality, peer-reviewed research that demonstrates significant positive associations between the density of packaged liquor outlets at the local level and a wide range of negative outcomes.*

.....

*Where other neighbourhood characteristics have been examined, researchers generally find that outlets have larger impacts in areas of socio-economic disadvantage than in more advantaged neighbourhoods. There is suggestive evidence that big-box liquor stores may contribute more to alcohol problems than smaller stores, on the basis that they will sell more alcohol.”*

### **Submission of the Royal Australasian College of Surgeons**

Dr John Crozier, Chair RACS (Australia and New Zealand) Trauma Committee, and Mr Peter Bautz, Chair RACS SA Trauma Committee provided a submission on behalf of RACS.

## OFFICIAL

Referring to statistics provided by the Australasian College for Emergency Medicine, they submit that:

*“Overall, the estimated one in eight hospitalisations relating to alcohol misuse continue to represent a significant and concerning proportion of health system workload.”*

Details of the detrimental effects caused by alcohol related harm as witnessed by South Australian surgeons are provided as follows:

*“Orthopaedic surgeons repair shattered limbs, and general surgeons operate on internal organs smashed in car crashes – many of which are alcohol related. Faciomaxillary surgeons repair shattered faces from acts of alcohol fuelled (65 per cent) interpersonal violence.*

*Neurosurgeons perform time critical surgery draining blood from the skulls of inebriated patients following low energy falls or coward punched victims. South Australian surgeons also treat and manage the chronic medical aspects of primarily preventable alcohol related harms. Alcohol misuse is a casual factor in more than 200 diseases and injury conditions, including cirrhosis of the liver, inflammation of the gut and pancreas, heart and circulatory problems, sleep disorders, male impotency and eye disease. Excessive alcohol consumption also raises the overall risk of cancer, including cancer of the mouth, throat and oesophagus, liver cancer, breast cancer and bowel cancer.”*

They discuss research and studies conducted in relation to alcohol harm and injury, and submit that:

*“There is a positive relationship between alcohol outlets (general, on premise and packaged) and increased rates of violence. Additionally, there is a sharp increase in domestic and non-domestic violence where there are more than two hotels and one bottle shop per 1,000 residents with licensed premises being the third most common Australian setting for assault leading to hospitalisation.*

.....

*There is also substantial evidence in Australia and internationally that regulating the physical availability of alcohol, through outlet density restrictions, is one of the most effective ways to reduce its negative impacts.”*

Dr Crozier and Mr Bautz note the 2017 amendments to the Act relating to harm minimisation, and refer to the Object of the Act under section 3(1)(a) which states that the sale and supply of liquor is to occur in a manner that minimises harm and the potential for harm caused by the excessive or inappropriate consumption of liquor.

They point out the lack of publicly available crime data available in South Australia relating to the involvement of alcohol in criminal offending (unlike other jurisdictions such as New South Wales) and suggest that this is a barrier to rigorous evidence-based policy.

Dr Crozier and Mr Bautz submit that in light of the amendments to the Act relating to harm minimisation:

*“the onus should not be placed upon opponents to demonstrate why the overwhelming national and international empirical evidence base is relevant and should be applied to the specific local context. Instead the onus should be placed upon the applicant to demonstrate*

## OFFICIAL

*via independently verified research (not industry funded and developed) why the local context should be considered differently to the empirical evidence base.”*

Citing a number of Australian studies, Dr Crozier and Mr Bautz submit that in Australia:

- about half the reported cases of interpersonal violence, domestic violence and sexual assault are related to excessive alcohol consumption;
- alcohol use is often associated with more severe acts of violence reported to the police; and
- the severity of violence has been shown to increase with the amount of alcohol consumed.

Following the outbreak of COVID-19, there were reports from those on the front line of an increase in incidents of domestic violence, which led the United Nations to declare a ‘Shadow Pandemic’ *“to describe how the epidemic of domestic violence exists simultaneously with, but in the shadow of and obscured by the COVID-19 pandemic.”* Figures released by SAPOL indicate that the incidence of domestic violence in South Australia increased by 11% in 2020 compared to 2019. Dr Crozier and Mr Bautz report that the increase in domestic violence also coincided with an increase of \$3.3 billion in turnover in the Australian alcohol retail sector in 2020.

Dr Crozier and Mr Bautz make the following submission in conclusion:

*“Therefore, at a time of increased stress, pressure and uncertainty placed upon individuals and families, further saturation of outlet density across Adelaide and South Australia is the wrong move and sends an incorrect message to the community. It also stands in stark contrast to the harm minimisation of the object of the Act and sets a dangerous precedent for future applications.”*

### ***Submission of Australia’s National Research Organisation for Women’s Safety***

Ms Padma Raman PSM, Chief Executive Officer, provides a submission on behalf of ANROWS, which is an independent, not-for-profit company established under Australia’s *National Plan to Reduce Violence Against Women and their Children 2010-2022*. The primary function of ANROWS is to provide an accessible evidence base for developments in policy and practice design for prevention and response to violence against women in Australia.

Referring to a report of the Foundation for Alcohol Research and Education released in 2015, Ms Padma advises that:

*“In Australia, alcohol is involved in around half of all domestic and family violence (DFV) assaults reported to police, with incidents of violence increasing on days when male partners were drinking.”*

ANROWS conducted research in 2017 and released a report on the links between alcohol consumption and domestic and sexual violence against women, finding that this link can manifest in a number of ways such as:

- perpetration of violence against women;

## OFFICIAL

- the use of alcohol to victimise women; and
- women using alcohol as a coping strategy to deal with violence, which has a range of flow-on effects including an increased risk of further violence, a reduced ability to engage in treatment programs and an increased likelihood of losing custody of children.

In 2017, ANROWS conducted and reported on the *National Community Attitudes towards Violence against Women Survey* to examine people's understanding of the role of alcohol and other drugs in excusing men's violence or victim-blaming women. The results showed that "a small and declining proportion of Australians believe in these notions of alcohol use to excuse or blame women."

The research conducted by ANROWS in 2017 recommended "that any alcohol-specific interventions (at government, community or individual levels) designed to reduce violence against women need to reflect the complexity of the connection between alcohol consumption and violence against women."

In 2015 ANROWS produced a collaborative report entitled *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia* that made specific recommendations on improvements around the regulation of alcohol including its availability and pricing and the culture around alcohol, as well as "cross-sector collaboration with DFV response services, peak policy agencies, mental health, and other drug services to facilitate a holistic approach to overcome the harm caused by alcohol consumption."

Ms Padma submits that "planning for the geographic location of the sale and supply of alcohol should be considered and developed in collaboration with Aboriginal and Torres Strait Islander peoples and organisations." Responses to violence against women in these communities "need to be holistic and community driven." A research report conducted in 2020 suggested that "responses should be led by local Aboriginal and Torres Strait Islander organisations such as healing, trauma counselling and alcohol and other drug rehabilitation."

In a study conducted in May 2020 by the Australian Institute of Criminology examining the impacts of the COVID-19 pandemic on DFV, women reported increased alcohol consumption in the three months from February 2020. Another study on the impact of alcohol-related harm in families and alcohol consumption during COVID-19 "highlighted that the changes to alcohol consumption during large-scale disasters may increase harm in families."

In relation to gambling and increased alcohol consumption, a study funded by ANROWS in 2020 "found that violence was more likely to escalate where there was problem gambling present, whether by the man or the woman." It was reported that alcohol or drug use by a partner dramatically increased their gambling activities and that women were fearful of their safety and the safety of their children where gambling losses led to alcohol and drug fuelled violence.

Looking at the correlation between major sporting events and alcohol, a recent UK study found that "alcohol consumption following football matches coincided with increased DVF in the hours after a game." It also found that DFV increased in areas where a match was scheduled for midday or the afternoon as it gave perpetrators an opportunity to drink for a longer period after the game.

## OFFICIAL

Ms Padma provides the following summary and recommendation:

*“Alcohol does not, in itself, cause DVF, and cannot be used to excuse violence. However, alcohol is connected to the perpetration of violence in a number of ways – for example, alcohol use can increase the severity of violence. When examining the sale and supply of alcohol, consideration should be given to the complex relationship between alcohol consumption and violence against women. This consideration should also recognise other contributing factors, including the impact of disasters like bushfires and the COVID-19 pandemic, as well as the links between alcohol consumption and problem gambling.”*

The Applicant has addressed the submissions of Professor Livingston, RACS and ANROWS, which it refers to collectively as the ‘Harm Submissions’ in its Further Submissions dated 5 October 2021 (A4) and submits variously that the Harm Submissions collectively “are of such a high level and general nature that they ought not be given any weight, or undue weight” (1-3, A4).

The Applicant advances a number of reasons in support of their contention that little to no weight should be placed on the Harm Submissions, which are summarised as follows:

- they do not deal with specific local issues relevant to the applications (1.1, A4); none of the Harm Submissions seek to address any of the details of the application, and are not “locality specific” (2, A4);
- in the absence of locality specific information it is difficult to see what weight could be placed on the Harm Submissions (3, A4);
- consideration of the application involves an evaluative exercise that weighs the positives and negatives that will come with the grant of the application and it is unclear whether Dr Livingston, RACS or ANROWS actually reviewed any of the material that was lodged in support of the application and none of them have commented on that material (6-7, A4), and none have produced any evidence to contradict various matters relevant to their harm submissions that were contained in the material lodged in support of the application in relation to such things as: the lower liquor licence density in the locality (7.1, A4); lack of “challenging circumstances” in the locality (7.2, A4); lack of evidence for the locality identifying what proportion of crime is related to the consumption of alcohol, nor any evidence as to how the grant of the application would exacerbate existing crime levels (7.3, A4); no consideration of the SEIFA indexes for the locality (7.5, A4); there is no BWS Store in the locality and this offering will provide a different product range (7.6, A4); the proposed offering is not a larger store, but rather a modest store operated by an experienced liquor retailer with extensive policies and procedures and detailed staff training and induction (7.7-7.8, A4); the proposed site is not considered a congregation area for school children or minors (7.9, A4); there are no cultural risks with the application or harm to places of worship (7.10, A4); there are no aged care facilities in close proximity which may give rise to risks to residents (7.11, A4); and that aside from DASSA, none of the other 53 stakeholders who were notified of the application responded or raised concerns in relation to the application (7.12, A4).

The Applicant’s lawyers submit that in light of the matters above, and that taking all of the factors into account *“there are little, if any, negative impacts associated with this Application and in any event, our client has sound policies and procedures in place to address any perceived harm associated with the Application”* (8, A4).

The Applicant makes a number of general comments about Dr Livingston’s submission and the research he has relied upon (9 – 9.7, A4), and refers to the conclusion of Dr Henstridge

## OFFICIAL

(considered in the recent BWS Mount Gambier decision) that one of the papers relied on by Dr Livingston “*Disaggregating relationships between off-premise alcohol outlets and trauma (Canberra, FARE)*” was not reliable and should be disregarded.

The Applicant notes that RACS refers to the emphasis on harm minimisation in the amendments to the Objects of the Act but submits that it has addressed the significant harm minimisation measures that it will undertake at length (9.8, A4).

The Applicant notes that the ANROWS submission does not mention packaged liquor, but rather focuses on the harm associated with alcohol consumption generally, and while it accepts that any liquor application may pose some risk of harm, that a balanced assessment of the evidence shows that there are a substantial number of positives and little (if any) negatives associated with the application and that it is in the community interest (9.9, A4).

### **Liquor Licence Density in the Locality**

MasterPlan provide analysis of the licence density of the Mount Barker locality vis-à-vis South Australian averages per 100,000 persons (Table 7, 11.3.34, CIR), which showed that rate of General and Hotel licences plus Packaged Liquor Sales Licence outlets for SA of 1001 which equals a rate per 100,000 people of 59.70 for SA as a whole, compared to 29.64 for the Mount Barker locality. MasterPlan submit that “*the locality comprises a significantly lower density of licensed premises when compared to the South Australian average*” (11.3.37, CIR).

I note that the liquor licence density for the locality has increased after the MasterPlan analysis due to the grant of the Liquorland PLSL application in Mount Barker late last year (currently under appeal).

The grant of Liquorland’s application in Mount Barker late last year has increased the packaged liquor outlet density from 9.88 per 100,000 population (compared to the SA average of 12.41 per 100,000 population) to 14.82. In the event the present application is also granted the PLSL density for the locality will increase to 19.75 per 100,000 population, which is above the SA average density for PLSL outlets. In the event the present application is approved the combined figure for General and Hotel and PLSL outlets for the locality will increase from 34.58 to 39.51 per 100,000 of population, which is below the SA average combined figure for General and Hotel and PLSL outlets of 59.70.

Consequently, whilst there are already ample takeaway packaged liquor options in the locality, from a statistical perspective, the locality cannot be said to be ‘awash’ with liquor.

### **Cultural, recreational, employment or tourism impacts**

The Applicant submits that a BWS store typically employs 1 to 2 full time and 3 part time or casual employees. MasterPlan concedes that there is a counter argument that that there will be no net benefit to employment due to job losses at other licensed premises but contends that “*this is not the experience of BWS generally in other similar locations*” (11.4.1, CIR).

MasterPlan do not comment specifically on the impact that the grant of the application may have on the Pulpit Cellars, or any other PLSL store in the locality, but do concede that some competing stores may choose to reduce the number of hours that employees are engaged as a result of a loss of sales in those competing stores. MasterPlan contend that there will be an overall net benefit of total employment hours available to job seekers (11.4.3, CIR).

The Objectors draw attention to the potential impact on other licensees in the locality and submit that “*the operators of the Pulpit Tavern/ Urban cellars bottleshop have suffered from a decline in trade in recent years*” (52, Ob1), and that should “*the licensees of the Pulpit Tavern*

## OFFICIAL

*suffer a further diminution of trade as a result of this additional bottleshop proposal then it is likely that the ongoing viability of the Pulpit Cellars will be very much in question” (55, Ob1).*

The Objectors submit that it *“would be contrary to the public and community interest for the establishment of a standard supermarket type liquor store should it result in the loss to the public of the very good bottleshop at the Pulpit/ Urban Cellars with its “generous range of beverages” and convenient “one stop shop service for customers” as acknowledged by MasterPlan at 11.3.27 and the Court” (61, Ob1).*

In reply the Applicant submits that *“the protection of licensees in the area cannot, of course, form any part of the Commissioner’s consideration of this application”* and refers to s 53(1) of the Act which *“expressly sets out that in exercising his discretion, the Commissioner must not take into account an economic effect on other licensees in the locality affected by the application” (pg1, A2).*

Additionally, the Applicant notes that the Objectors are owned and operated by a significant hotel group known as EDP hotels which *“comprises up to 17 licensed venues (11 of which contain retail liquor outlets), which makes the Objectors’ submissions about this “difficult to accept, particularly in the absence of evidence” (16.3, A2).*

The Objectors did attempt to file some evidence in relation to the potential impact on existing licensees in the event the application was granted, at a late stage of the proceedings, which I declined to accept or consider.

In any case, whether or not the grant of the application will cause a decline in trade to surrounding competitors is not a relevant consideration and is a matter that I am expressly precluded from considering by s 53(1) of the Act as submitted by the Applicant. Consequently, I place no weight on the submissions made by the Objectors about the potential economic impact to other licensees in the locality that may arise in the event the application is granted, and I place no weight on their assertion that it would be contrary to the public interest if Pulpit Cellars closes as a result of the grant of this application.

Granting the application will likely result in a small increase in employment in the locality by virtue of people employed at the new BWS Store, and I note that the construction and fit out of the proposed premises (internal walls, glazing, doors, services, and fit-out), has been estimated to cost \$400,000 to \$500,000 (5.2, CIR) will also likely result in some employment, albeit short term.

MasterPlan submit that *“a significant benefit will be the provision of ready access to a purpose-built store featuring the latest in design and layout..... to ensure the customer shopping experience is as pleasant and convenient as possible” (11.4.4, CIR), and that “the co-location of the new store within the centre and adjacent to Woolworths supermarket will provide greater convenience to those persons in the locality who prefer to do all of their grocery and liquor shopping in one (1) location and under the same roof in one trip” (11.4.5, CIR).*

Whilst I am satisfied that if the application were to be granted it will likely result in a small increase in employment in the locality and that most of the benefits of this increase in employment will go to those residing within the locality, I do not place much weight on this benefit given that MasterPlan concede that employment hours may be reduced at other licensed premises within the locality and given that if the application is refused the tenancy may be used by another tenant/ business (non PLSL outlet) that could conceivably also result in additional employment in the locality.

### **Social impact and impact on the amenity of the locality**

MasterPlan state that the locality has a lower crime rate “across almost every recordable offence type compared to the State average, with the one exception of ‘Serious Criminal Trespass – Non Residence’ (11.3.2, CIR), and note that the crime rate for the locality is “approximately one-half of the State average (11.3.3, CIR).

MasterPlan observe that “theft from shop” is the second most common offence recorded in the locality, but note that it is significantly less than the South Australian average per population (11.3.6, CIR). I am satisfied from reviewing the SAPOL statistical data contained in Table 5 of the CIR (pg25), that this does not appear to be a prevalent offence or particular problem within the locality.

MasterPlan submit that there is no evidence that assists in identifying what proportion of crime is related to the consumption of alcohol, and that “*there is no evidence to suggest that an additional packaged liquor sales outlet in this locality would lead to increased crime levels*” (11.3.7, CIR).

MasterPlan state that whilst consideration of the relevant statistics is relevant to my consideration of the application, “*caution must be exercised when assessing SAPOL crime statistics. Individual statistics cannot be viewed in isolation. Furthermore, some of the crime statistics are unlikely to be relevant should the application be approved. It is also not known to what extent alcohol may have been be (Sic) involved, if any, in the execution of recorded criminal offences*” (11.3.15, CIR).

MasterPlan provide some analysis of the unemployment rate in the locality and note that unemployment ranges between 4 percent at Lobethal – Woodside and 8 percent at Mount Barker, which is higher than the Greater Adelaide average of 6.5 percent, but submit that “*this modest statistical discrepancy is not considered to represent a disproportional social risk factor for the unemployed within the locality. The unemployed are currently able to purchase liquor products. The outlet within the Centre is not anticipated to increase that occurrence in providing the convenience of a one-stop shop for supermarket customers*” (11.3.18, CIR).

Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the Australian Bureau of Statistics (**ABS**) that ranks geographic areas in Australia according to relative socio-economic advantage and disadvantage. The indexes are based on information from the five-yearly Census. The locality records lower indexes across all measurable criteria in relation to SEIFA category indexes such as ‘relative socio-economic disadvantage’, ‘index of relative socio-economic advantage and disadvantage’, ‘economic resources’ and ‘education and occupation’ when compared to either the national average or to South Australia.

MasterPlan states that while the locality records slightly lower indexes across three of the four measurable criteria compared to Greater Adelaide, it “*is notably higher in every index than the Australian average*”, which MasterPlan contend “*would suggest that residents of the locality are in a comfortable socio-economic position compared to the nation overall*” (11.3.9, CIR).

The highest scoring SEIFA index for the locality is the ‘Index of Education and Occupation’ at 5.87 (out of a possible 10). MasterPlan submit that this score indicates that the locality has above average education, with the majority of people being employed (11.3.10, CIR).

The ‘Index of Economic Resources’ at 5.81 (out of a possible 10) is the only measure in the locality where the score is higher than the equivalent index for Greater Adelaide, which MasterPlan submit indicates that the broad economic position of the locality is above the average of Greater Adelaide (11.3.11, CIR).

## OFFICIAL

The lowest scoring SEIFA index for the locality is the 'Index of Relative Socio-Economic Advantage and Disadvantage' at 5.41. MasterPlan note that this score also has the greatest disparity with the corresponding Greater Adelaide score of 6.52. MasterPlan submit that this indicates that households in the locality have moderate to low incomes, with the majority of local residents employed in unskilled occupations compared to the surrounding metropolitan region (11.3.12, CIR).

MasterPlan note that in a similar liquor licensing regulatory environment in NSW, the NSW Independent Liquor and Gaming Authority indicated that high outlet density may increase regulatory concern as to the overall impact of granting another licence if the proposed new business is likely to contribute to relatively challenging circumstances in each locality or the broader community (and cites the Decision at *BWS Petersham A14/ 267*, page 238). MasterPlan are of the opinion that the social profile of the locality does not represent socio-economic characteristics that are considered as "challenging circumstances" (11.3.14, CIR).

MasterPlan submit that *"providing a more convenient alternative to purchase licensed products is not anticipated to result in an expansion of the market. The sales generated by the proposed outlet are likely to be in lieu of purchases that would have been made at existing outlets throughout the locality, and beyond the locality. As such the proposal is not considered to have a negative impact for at-risk consumers within the community, but rather will offer the convenience to purchase a selection of beers, wines and spirits as part of the daily or weekly shop"* (11.3.13, CIR).

MasterPlan provide commentary and analysis of the existing licensed premises in the locality, noting that the locality has 2 existing PLSL (which would now be 3 PLSL given the approval of the Liquorland Mount Barker application late last year), as well as 5 General and Hotel Liquor Licences (11.3.19, CIR).

After discussing the various other packaged liquor options available in the locality (discussed in more detail above), MasterPlan ultimately contend that:

*The absence of a Packaged Liquor Sales outlet for customers visiting the Woolworths supermarket results in customers seeking the convenience of purchasing liquor as part of the daily or weekly shop not being able to do so at the large-scale shopping centre as part of their one-stop-shop experience. There is a community interest in enabling the purchase of household groceries and items and liquor supplies in one location, which would be realised by this proposal* (11.3.32, CIR), and that *"The proposed outlet's position in a large, well established and well patronised shopping centre represents an appropriate location to provide convenience shopping within an existing centre. The offer of a vastly more convenient shopping experience is increasingly considered to be a positive community benefit, without attracting a negative social or amenity impact given the characteristics of the locality"* (11.3.33, CIR).

The Applicant contends that the proposed offering will be a modern, safe and clean store with a comprehensive range of quality liquor and associated products and services (9, A1), and will stock a wide range of liquor (12, A1).

It is clear from the CIR that a significant number of customers shop at the Supermarket, with around 24,317 customer transactions per week (approximately 3,473 per day and over 1,200,000 per year (4.1.1, A1). It is not known how many of these are repeat customers, but in any case, the proposed offering will likely appeal to many customers who frequent the Shopping Centre who wish to purchase packaged liquor at the same time. Many people in the local community can be expected to take advantage of the proposed premises, and many will find this very convenient.

## OFFICIAL

Additional convenience for some members of the community, whilst not sufficient to satisfy the community interest test on its own, is a factor that may be considered by the Licencing Authority when performing the evaluative exercise of determining whether or not it is in the community interest to grant the application.

### **Community support for the proposed business and community consultation**

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey. Responses were received from 374 people who answered the first 3 survey questions and 268 who answered the fourth question. Of these 71.7 percent answered “yes” to the third question that asked: “*Would you support an application for Woolworths Group to open a BWS liquor retail store, which would be located in the Shopping Centre right next to the existing Woolworths Supermarket?*” (12.2-12.3, CIR).

MasterPlan acknowledge that the survey has inherent limitations given its relatively small sample size, but submit that the response from existing Woolworths’ customers to a PLSL outlet adjacent to the Mount Baker Woolworths was “resoundingly endorsed” and that the results of the survey “*suggests a strong and favourable response in relation to the ‘community interest’ test for Woolworths’ customers*” (12.5, CIR).

The Applicant engaged in community consultation by writing to 53 key stakeholders and interest groups relevant to the locality notifying them of the intention to lodge an application for a PLSL outlet at the Site. At the time of MasterPlan preparing its report, one response had been received from Drug and Alcohol Services South Australia (on behalf of SA Health), which MasterPlan describe as being “advisory in nature” (12.1, CIR).

Marina Bowshall, State Director of DASSA, wrote to the Applicant on behalf of the Department of Health and Wellbeing. Ms Bowshall states that the SA Government is committed to reducing alcohol-related harm, as outlined in its whole-of-government South Australian Alcohol and Other Drug Strategy 2017-2021 and submits that “*there is a growing body of evidence linking the physical availability of alcohol to the risk of violence, including domestic violence. Recent Australian research has also found a strong association between increased proximity to off-premises licensed outlets and alcohol consumption at levels associated with risks of short-term harm at least weekly*” (Attachment P, CIR). The research referred to is not cited or included in the letter.

The Applicant submits that it specifically notified the Mount Barker branch of Drug and Alcohol Services as part of the community consultation process and that whilst a response was received from DASSA (on behalf of SA Health), “*no specific response or any particular concerns have been raised by the relevant branch/ facility itself*” (18.3, A1).

### **Submission by the Objectors opposing the application (Ob1) and the Applicant’s submissions in reply (A2)**

A submission opposing the grant of the application was received from lawyers acting on behalf of Gray’s Inn and Richie’s Tavern, which is summarised below, together with the submissions in reply received from the Applicant.

The Objectors make various submissions opposing the grant of the application, including:

- that the grant of the application would not be consistent with the objects of the Act, or would be contrary to the Liquor Licensing Act in some other way;

## OFFICIAL

- that granting the application is not in the community interest;
- that in the event the application were to be granted that it would cause undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the proposed premises;
- that the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the proposed premises to which the application relates would be prejudiced; and
- that the amenity of the locality in which the proposed premises to which the application is situated would be adversely affected in some way;
- that it is likely that the impact of this additional store on trade at the Pulpit Cellars bottleshop would result in it being unviable and lead to its closure and loss to the community (58, PT1);
- that it would be contrary to the public interest and community interest for the establishment of a standard supermarket type liquor store if it results in the loss to the public of the “very good bottleshop at the Pulpit / Urban Cellars” (61, PT1);
- that the site of the proposed offering is in very close proximity to existing outlets and that adding yet another outlet in the area would make the ratio greater than the rough State average (of approximately 2,000 residents, as referred to by Gilchrist J in Park Holme);
- that it is not reasonable to assume that any net additional employment will stem from the grant of the application (93-99, PT1);
- that His Honour’s Decision in *Hove* is relevant to consideration of this application and refers to His Honour’s comments that “*In the past this Court has said that it is not in the public interest for there to be a proliferation of bottleshops selling essentially the same range of liquor within short compass of each other. I think this remains so notwithstanding the changes of the Act*” (PT2). The Objector notes that there are a range of convenient liquor options for customers that are close to the site of the proposed offering and that the application should be refused on the public interest discretion due to proliferation concerns;
- that the expectations and aspirations of the public are already being met consistent with the findings of the Court in 2015;
- that another Woolworths licence in the locality is likely to be “contrary to the balance of the industry” – BWS Seaford [2015] SALC19 at 89, per Gilchrist J;
- that when the Licensing Court considered a PLSL application in the locality in 2016 it found that “*contemporary community expectation is being met*”, “*the residents of Mount Barker and those living in adjacent areas have many and varied takeaway liquor facilities to choose from*” and that “*any inconvenience to the residents in the locality have in accessing them will not be great*” (114, PT1)
- any suggested additional convenience of yet another one-stop shop option does not equate to community or public interest when it has already been found that community expectations are being met.

The Applicant has filed comprehensive submissions in reply and submits that a number of cases referred to by the Objector refer to the Licensing Court’s findings under the old legislation and the ‘needs test’.

The Applicant contends that it does not rely on ‘convenience’ alone to establish the community interest and puts forward an evaluation of what it says are the positives and negatives associated with the application. The Applicant argues that the Objector is essentially raising a ‘needs’ test type argument that is no longer relevant in the context of the current statutory regime and “community interest” test.

## OFFICIAL

The Applicant submits that the application is consistent with the expectations and aspirations of the public for the purposes of the Objects of the Act and reiterates that Mount Barker Woolworths is the highest trading Woolworths supermarket in all of South Australia (13, A2).

The Applicant has provided an analysis of liquor licence density (at 20, A2) and submits that the submissions on density put forward by the Objector are erroneous, and submits that in the event that both its application and the Liquorland Mount Barker application were granted that the ratio would be roughly one takeaway liquor outlet per 2,892 persons which is below the State average of approximately one per 2,000 residents.

The Applicant submits that the survey data provides a reasonable indication of community support for the proposal (4, A2).

The Applicant submits that “convenience” (i.e. one-stop-shopping) is a substantial benefit, but is not the only public benefit identified in relation to the proposed packaged liquor outlet, and submits that the following matters are also relevant to establishing community benefit (5.1 – 5.8, A2):

- there will be new employment opportunities in relation to the proposed BWS Store for residents in the locality;
- there will be new employment opportunities in relation to the modifications and building works to the proposed premises;
- it will have positive trade implications for other traders in the Shopping Centre;
- it will stock local products with a particular focus on the Adelaide Hills region;
- it will be a modern, safe, well managed and well stocked liquor store which will have a positive impact on the amenity of the area;
- it will enable customers who are members of the Woolworths and BWS rewards program to benefit from exclusive, targeted offers in line with their preferred products based on their buying patterns;
- it will contribute to local groups and organisations. The aim of the Applicant is to contribute at least 1% of pre-tax profits to the community in which it operates; and
- it will offer a point of difference to the other take away liquor facilities in the locality (given there are no other BWS outlets currently in the locality).

The Applicant submits that the Objector is relying on the Licensing Court’s earlier findings (made under the old legislation) in relation to the application at the same Site, and in particular notes that the Objector is relying on the Court’s findings that “*the town centre has ample take away liquor facilities*” and the “*contemporary community expectation is being met*” (BWS – Mt Barker [2016] SALC 33 at [136] and [140] at 6, A2). The Applicant submits that it would be erroneous to treat “community expectation” as a proxy for “community interest”, and that the meaning of “community interest” must be determined by reference to the current legislative provisions, construed in context (6, A2).

The Applicant submits that it is not relying on convenience alone to establish community interest and refers to the evaluative exercise as clarified by the Court in *Park Holme* that weighs the positives and negatives that will come with the grant of a new packaged liquor sales licence.

The Applicant notes that the Objectors place significant emphasis on the number of licensed premises in the locality to contend that the locality is already “well served” by these outlets. The Applicant submits that the “needs” test no longer applies and that “*the focus is on “community interest” and “harm minimisation”, not about whether the existing premises adequately “serve” the locality*” (21, A2).

## OFFICIAL

Additionally, the Applicant submits (27, A2) that:

The application should not be refused on account of a single Submission by two commercial objectors. The application should be determined on its merits and we maintain that:

- the beneficial economic and social aspects of the application sufficiently outweigh the negative social aspects such that the application is in the community interest;
- the analysis of the demographics undertaken by MasterPlan in the CIR confirm that there is nothing unusual about the area under consideration in this case;
- the applicant is an experienced liquor retailer. It has sound policies for the responsible service of alcohol;
- this is a modest application. It involves no more than a request for a packaged liquor sales licence to enable the creation of a small, attractive, convenience style bottle shop adjacent to a very popular supermarket; and
- there is no reason for any adverse exercise of the Commissioner's discretion against the grant of the application.

### Decision

The expert engaged by the Applicant has adopted a 5-kilometre radius in determining the locality, as the area most likely to be affected by the granting of the application. I am satisfied that the Applicant has correctly identified the locality.

Undertaking the evaluative exercise that the Act requires, involves weighing the positive aspects of the proposed application with the negative aspects in order to determine whether granting the application is in the community interest.

It is clear from the MasterPlan CIR that the majority of people who shop at the Shopping Centre live in the locality. The range of products the Applicant is proposing to provide is significant (approximately 1,780 lines of stock) and granting the application would be likely to result in an increase in convenience for those shopping in the locality who wish to purchase packaged liquor products when shopping at the Woolworths Centre. Many of the local community can be expected to take advantage of the proposed premises, and many will find it to be very convenient, although convenience alone is not determinative of the application and is only one factor to be considered.

The number of people who will benefit from the convenience of the proposed offering is significant and is analogous to the situation in the Liquorland Park Holme matter, as opposed to Hove Sip N Save where the supermarket under consideration was considerably smaller and less busy than the supermarket in Liquorland Park Holme, ([117] to [126] in the *Hove* decision are on point).

I have considered and have had regard to the Objects of the Act, as required by section 3(2) of the Act, in determining the application. I have also considered the Objectors' submissions in light of His Honour Judge Gilchrist's decisions in Liquorland Park Holme and Hove Sip N Save.

I note that SAPOL and the Mount Barker District Council have not objected to the application.

The Applicant, through its lawyers, wrote to various (53) stakeholders and interest groups advising them of the intention to lodge a PLSL application and inviting comment on the proposed application. The only response received was received from DASSA (on behalf of SA Health) as discussed above.

## OFFICIAL

I have considered the matters raised by DASSA and the Objectors' submissions about potential harm in light of the risk mitigation policies, procedures and staff training the Applicant has identified that it will put in place to mitigate the risk of harm to the community.

Harm minimisation is a key component of the community interest test, underpinned by the first object of the Act: "*to ensure the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor.*"

The observations of Gilchrist J at [43] – [44] in the Liquorland Park Holme matter are applicable and relevant to this application and the questions of risk and harm that it poses:

*.....common experience informs us that for many in the community, alcohol is a problem. Excessive consumption of alcohol carries with it serious health risks. It can fuel domestic violence. It can shatter relationships and cause families to become dysfunctional. It can cause social problems and result in violent and anti-social behaviour. It can cause financial problems and result in people making risky and poor decisions.*

*It can be assumed that some of the relevant community will be afflicted by these issues. It can be assumed that some will be alcohol dependent and that some of these will be attempting to abstain from drinking or reduce their consumption. The addition of another take away liquor facility will increase the opportunities for such persons to obtain alcohol. Passing an attractive liquor outlet when walking in and out of a supermarket increases the risk for those for whom alcohol is a problem, to succumb to the temptation to buy it. If there was evidence that there were a greater number of such vulnerable persons in this community as opposed to the general population or that this locality was already awash with take away liquor facilities, such matters might tip the balance in determining that it is not in the community's interest to grant the application.*

The CIR indicates that the population profile of the locality enjoys a lower level of crime when compared to South Australia as a whole (11.3.2, CIR).

It is clear from the expert evidence put forward by the Applicant that the liquor licence density for the locality is not unusually high and that the locality is clearly not 'awash' with take away liquor facilities.

I have carefully considered the submissions by RACS, ANROWS and Professor Livingston, and consider that I can place some weight on these submissions, at least at a general level, despite the submissions to the contrary by the Applicant. Alcohol causes significant harm in the community and it is for this very reason that alcohol is a highly regulated product.

The Applicant is an experienced and reputable licensee who operates an established business, with well trained staff and a comprehensive range of policies and procedures, which I consider would adequately mitigate the risk of harm to vulnerable members of the community.

I have considered 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, and I am satisfied on the material before me that the risk of harm posed by the proposed application is relatively low.

## OFFICIAL

The proposed premises will likely provide some employment opportunities, and it is likely that some of these opportunities will be for the benefit of members of the relevant community. As stated earlier, I place limited weight on this given that the grant of this application may result in reduced employment at outlets operated by competing licensees in the locality, and given that in the event the application is refused, some other business would likely be established and operate out of the premises which could also provide additional employment opportunities in the locality.

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey in which over 71 percent of the people surveyed would support an application to establish a BWS store at the Site, and 97 percent considered it to be more convenient to be able to do their grocery and liquor shopping in the one location.

I am satisfied that the proposed liquor store if approved will not negatively impact the activities conducted on any community buildings and facilities that are situated within the locality.

There is no reason why the application should be refused on the basis of the matters outlined in s 57 of the Act such as the suitability of the premises; the potential for them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; or prejudice to the safety or welfare of children attending nearby kindergartens and schools. The relevant consents and development approvals are in place to permit development of the proposed premises.

Section 53 of the Act gives the Authority *“an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)”*.

Section 53(1a) provides that the Authority must refuse an application if it is satisfied that granting the application would be contrary to the public interest, and section 53(1b) provides that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the objects of the Act.

The Objectors have made submissions, referring to Gilchrist J's decision in *Hove Sip N Save*, that 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, that it is not in the public interest for there to be an oversupply of retail liquor outlets, and that there are already ample takeaway liquor options in the locality.

In December 2020, I granted a PLSL in Mount Barker to Liquorland, and consequently, people residing in, or visiting the locality, already have access to a packaged liquor outlet that is co-located with a full line supermarket in the locality. The present application calls for a different outcome.

In my view granting this application is not in the community interest. Whilst the grant of the application would result in even more convenience for some Woolworths' customers, the locality already provides opportunities for one-stop-shopping, ample take away liquor options, and significant convenience.

## OFFICIAL

In *BWS Mount Barker 2016* Gilchrist J found that the town centre had “ample” takeaway liquor facilities. The locality now has more takeaway liquor options than was the case in 2016, and whilst that decision considered a PLSL application under a different test (the ‘needs’ test), I consider His Honour’s comments as regards convenience and the availability of packaged liquor outlets in the locality to be relevant to this application, given that the main benefit that the grant of the present application would appear to confer (other than some employment, which may be offset by reduced employment elsewhere in the locality), is some additional convenience to some members of the locality who shop at Woolworths and wish to purchase packaged liquor at the same location whilst shopping there.

The Objector has drawn attention to the fact that in *Hove* His Honour indicated that the public interest discretion and concerns as to proliferation would have resulted in the Hove Sip ‘n’ Save application being refused (Ob2).

I have considered the Applicant’s submissions in reply addressing *Hove* (A3), and agree with the Applicant that in many ways the factual circumstances considered by the Court in *Hove* are readily distinguishable from the present application in respect of such matters as the quality of the application; the size of the proposed liquor store; the petition evidence; the experience of the respective applicants in selling takeaway liquor; the policies and procedures; the product range; the size of the supermarkets located at the sites; the car parking available; and lack of attention to detail by the applicant to certain matters in the *Hove* application compared to the almost forensic attention to detail apparent in the present application.

Irrespective of these differences, there are some matters of public interest that arise that are arguably similar to those arising in *Hove*. In my view *Hove* is relevant and analogous to the present application in relation to the public interest considerations and the risk of setting an undesirable precedent. I consider that the grant of this application would be contrary to the community interest and the public interest and would set an undesirable precedent likely to result in the wholesale alignment of packaged liquor stores and shopping centres. As noted by Gilchrist J in *Hove*, Parliament has chosen not to go down this path.

I am also mindful of the Objects of the Act, including the object to “*facilitate the responsible development of the licensed liquor industry...*”. In my view, granting this application would not be consistent with the responsible development of the licensed liquor industry. Rather, granting this application would be a further step towards proliferation and would provide a precedent that would support the wholesale alignment of packaged liquor and shopping centres, which is not desirable in circumstances where the approval of this application will provide little more benefit to the community than providing even more convenience in a locality where there is already ample convenience and where consumers already have one-stop-shop options.

Accordingly, BWS’ application for a PLSL at Mount Barker is refused.

Dini Soulio  
**Liquor and Gambling Commissioner**  
**4 March 2022**