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BWS Para Hills PLSL Application Decision (No.204224)

Endeavour Group Limited (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated in the Para Hills Mall Shopping Centre at 2 Wilkinson Road Para Hills 5096 (**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 by the Australian Hotels Association (SA) (**AHA**) 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 (Masterplan) Community Impact Report, dated 19 August 2020 (**CIR**)
- Applicant's Covering Letter and Submissions, dated 10 September 2020 (**A1**)
- AHA Submission, received 19 October 2020 (**AHA1**)
- Applicant's Submissions in Reply, dated 4 December 2020 (**A2**)
- Applicant's request to vary the application, dated 11 January 2021 (**A3**)
- AHA's Further Submissions, received 2 February 2021 (**AHA2**)
- Applicant's Further Submissions, dated 5 March 2021 (**A4**)
- 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 Submission in reply to Professor Livingston, RACS, and ANROWS dated 25 February 2022 (**A5**)
- Letter to Council dated 21 March 2022 (**CS1**)
- Email response from City of Salisbury dated 29 March 2022 (**CS2**)

This application may only be granted if the Licensing Authority (**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*

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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 Service’s 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

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- (c) the adverse effects on a person's health; and
- (d) alcohol abuse or misuse; and
- (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) 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 business

The Woolworths Supermarket at 2-16 Wilkinson Road, Para Hills (**Supermarket**) is a full line supermarket that has been in operation for over 46 years. The Applicant contends that the proposed store 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).

The shopping centre currently comprises the Supermarket of approximately 1930 square metres in size, and includes (at the time the report was prepared) a newsagent, butcher, fish and chip shop, deli, hairdresser, chemist, fruit and vegetable shop, bakery, post office, a Salvation Army and take away pizza shop together with 240 car parking spaces (**the Para Hills Mall Shopping Centre**) (8.0 - 8.5 CIR).

If constructed as proposed the BWS Store will be approximately 175 square metres in size and will be immediately adjacent to the Supermarket. The PLSL outlet will be separated by a non-transparent partition wall and one single entry and exit point located outside of the supermarket trading area. A roller door will enable staff access from the supermarket to the stock room of the outlet.

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*

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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).

I note that the application and plans for the proposed BWS Store, as initially lodged, were not physically separate in the sense required by the Act given the Commissioner’s decision in BWS Cumberland Park, and I would have refused the application on that basis. In that matter the Commissioner refused the application on the basis that the store would not be physically separate from the Cumberland Park Woolworths Store in the sense required by s 38 of the Act (i.e. customers would have had to walk through the Woolworths Store to access and exit the BWS Store).

Following the BWS Cumberland Park decision, the Applicant sought and was permitted by the Authority to vary its application (i.e. it changed the location of the entry/ exit to the store to a position outside the Supermarket; A3). I am satisfied that the plans as amended are now compliant with s 38 of the Act and that the premises will be physically separate from premises used for other commercial purposes as required by the Act.

It is clear from the Applicant’s submissions that the Applicant does not concede that the plans as lodged were not compliant with s 38 of the Act, or that Commissioner’s decision in BWS Cumberland Park was correct about that application ‘offending’ the physical separation requirements of s 38 of the Act, but rather, the Applicant has made a strategic decision to vary this PLSL application to remove the physical separation requirements as an issue for debate/ consideration.

However, the Applicant submitted a Development Notification Form – Development Number 361/1348/2013BB in support of its application. I note that the nature of the approved development was described as “*Internal modifications to existing supermarket – Supermarket bakery fit-out*”, which despite Masterplan’s submissions, appeared to be inconsistent with the proposed development of a packaged liquor store.

I have since been advised by the City of Salisbury, that whilst a liquor store does fall within the definition of a shop and does not require a change in land use consent, it will “require an internal fit out approval from our Building Team prior to conducting building works.” Mr Tsanaktsidis also notes that the approved floor plan does not indicate the presence of a liquor store (3, CS2).

Having considered the information provided by Council, I cannot be satisfied that all the relevant approvals and consents are in place and in accordance with s57(2) of the Act, the application cannot be granted at this time. Given that the Applicant is required to obtain building rules consent prior to commencing any works in respect to the proposed alterations to the Woolworths store, it is open to me to consider whether the grant of a Certificate of Approval pursuant to s59(1) of the Act is appropriate in the circumstances.

Locality

The Guidelines provide a guide for applicants in relation to the ‘locality’ relevant to their application, and states that applicants are required to identify the geographic area from which

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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 within the metropolitan area will be the area within a 2km radius of the proposed outlet:

The population of the locality, as per the CBS portal is 73,692 persons. MasterPlan note that this figure utilises SA2 collector districts, and go on to provide a more accurate population figure for the locality of 19,280 persons by utilising ABS data comprising SA1 districts (9.8, CIR).

The locality primarily consists of low-density detached dwellings within a suburban setting, and includes educational, recreational and institutional facilities. The area has a high amenity value, comprising well-maintained housing with mature street trees and numerous landscaped local reserves (9.1 CIR).

The major transport corridors in the locality are Main North Road and Bridge Road that run northeast-southwest, and McIntyre Road which runs northwest-southeast. Montague Road also abuts the southern periphery of the locality. Nelson Road, Kesters Road, Maxwell Road and Milne Road are also prominent local connector roads within the locality(9.5, CIR).

The Para Hills Mall Shopping Centre is located within the Neighbourhood Centre Zone as identified in the City of Salisbury Development Plan. Masterplan note that this Zone is intended to provide “. . . a range of shopping, community, business, and recreational facilities for the surrounding neighbourhood” (Zone Objective 1, 8.2, CIR).

Other Packaged Liquor Outlets in the Locality

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

- 1 PLSL outlet; and
- 1 General and Hotel Liquor Licence

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 the PLSL outlet is a stand-alone building associated with the Fassina Liquor Merchant franchise. The store is located approximately 500 metres northwest from the proposed BWS Store, and it is not near other retail shops or a supermarket. The outlet has recently been renovated and is well-presented (10.3.17, CIR).

MasterPlan submit the Somerset Hotel is located approximately 1.10 kilometres in a direct line north of the proposed outlet. The Hotel is a large two storey establishment that incorporates substantial indoor and outdoor bistros, gaming areas and bars, providing a restaurant, alfresco and front bar focused experience for patrons. It also operates an associated drive thru bottle shop. The drive through represents a marketing model that is focused on high turnover stock lines and a limited range of licensed products (10.3.18-10.3.19 CIR).

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MasterPlan contend that the provision of a more convenient alternative to purchase liquor is not expected to result in an expansion of the market. The sales generated by the proposed BWS store are likely to be in lieu of purchases that would have otherwise been made at existing outlets throughout the locality. On that basis, 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 (10.2.26, CIR).

Liquor Licence Density in the Locality

MasterPlan provide analysis of the liquor licence density of the Para Hills locality by comparison to South Australian averages per 100,000 persons (Table 8, 10.3.22, CIR), which shows that the number of General and Hotel licences plus Packaged Liquor Sales Licence outlets for SA (1001) equals a rate of 59.70 per 100,000 people for SA as a whole, compared to 10.37 for the Para Hills locality. MasterPlan submit that “*South Australia on average has a significantly higher density of licensed outlets than the locality.*” (10.3.23, CIR).

MasterPlan further submit that the average State density of General and Hotel licence outlets is over nine times that of the locality and more than two times that for Packaged Liquor Sales outlets, relative to a rate of 100,000 persons, and that in relation to Packaged Liquor Sales Licence outlets and General and Hotel Licence outlets combined, the average State density is over five (5) times higher than that currently experienced in the locality. The Applicant considers that the locality is poorly serviced in regard to the availability of packaged liquor (10.3.24, CIR). It is clear from the density calculations that the locality is not ‘awash’ with liquor and no proliferation concerns arise.

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 an 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:

- *saturation of 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.”*

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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 various 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.

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 consider that it is relevant that this particular applicant does not currently operate any other packaged liquor stores in the locality, and on that basis I do not hold concerns that the grant of this particular application will result in diminished competition, market saturation or market dominance by the Applicant in the locality.

Additionally, in the absence of a submission from the ACCC dealing specifically with this application, there is no evidence to suggest that the grant of the application will result in diminished competition, market saturation or market dominance by the Applicant in the locality, and I 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 will be "*little (if any) negative impacts associated with the application*" (17, A1), and notes a number of matters in support of this contention, as summarised below.

MasterPlan submits:

- that although the Para Hills Primary school is in close proximity, it is separated from the proposed outlet by a reserve and the public library. Given that school pick up and drop off points are oriented away from the proposed outlet, it is not expected to be a congregation area for school children, nor otherwise represent a risk to minors in terms of exposure to liquor products (10.2.5, CIR);
- that there are no places of worship in close proximity to the proposed outlet, and there are no cultural risks in this regard (10.2.8, CIR);
- that there are no aged care facilities in close proximity to the proposed outlet. The proposal is not considered to represent a risk to aged care residents, but rather it is anticipated to assist some residents in providing a convenient one stop shopping option for customers who are less mobile. (10.2.10, CIR);
- that there are no drug or alcohol treatment facilities in the area, and no declared dry areas in the locality. (10.2.10 – 10.2.11, CIR); and

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- that the absence of buildings, facilities and areas within the locality that might otherwise support at-risk groups will help to ensure that there is no over-representation of vulnerable people frequenting the proposed outlet. (10.2.13)

South Australia Police (**SAPOL**) and the City of Salisbury have not objected to the application.

The Applicant wrote to 44 potential stakeholders and interest groups in relation to the application including the City of Salisbury, Department of Human Services, local police, SA Health, Service SA, various schools, kindergartens and aged care facilities, various medical clinics, disability/health services, community centres and several indigenous and ethnic community organisations.

The Applicant notes that aside from Drug & Alcohol Services SA, (**DASSA**) on behalf of SA Health, none of the other potential stakeholders or interest groups responded or raised any concerns in relation to the proposed liquor outlet. The Applicant considers the response from DASSA to be advisory in nature and did not raise any specific concerns in relation to this particular application (17.6, A1).

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 (17.1, 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 of 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 (17.3.3, 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 (10.2.14, CIR);
- the Applicant has extensive policies and procedures in the responsible service of alcohol, and detailed staff induction and extensive training on their roles and responsibilities, including the House policy; ID 25 Policy; Secondary Supply Policy; Responsible Buying Charter; Intoxication Policy; School Uniform Policy; and Best Practice Policies and Interventions (Attachment J, 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 (17.3.4, A1);

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- 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. (10.2.17, CIR);
- 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 (10.2.17, 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 (10.2.17, CIR);
- 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 (10.2.17, 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 (17.3.5, A1);
- incident registers are maintained in each BWS store so that any incidents are recorded and dealt with efficiently and appropriately (17.3.6, A1); and
- 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 (17.3.2, A1);

The locality has a comparatively lower crime rate compared to the State average (10.3.3, CIR), and the Applicant also notes that there is no evidence for the locality that identifies what proportion of crime is related to the consumption of alcohol (20.3, A1).

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 17.4-17.7, A2).

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

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(**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.

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- 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.

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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.

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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.

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

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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;
- 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.

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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.

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,

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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 25 February 2022 (A5) and submits that if I am minded to afford the Harm Submissions some weight in relation to this application, then "*such weight ought be limited and only at a general level*" consistent with the approach adopted in Liquorland Mt Barker.

The Applicant advances a number of reasons in support of their contention that limited weight should be placed on the Harm Submissions, which are summarised as follows:

- the Harm Submissions do not deal with specific local issues relevant to the applications (1.1, A5); and are not "locality specific" (2, A5);
- there is nothing in the Harm Submissions of assistance to me as the decision maker in relation to locality specific matters relevant to the application (2.1, A5);
- each of the Harm Submissions fail to address the core function of the community impact test which is based on an assessment of the impact of the sale and supply of liquor within the relevant locality (2.3, A5);
- 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 (4-5, A5), 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 significantly lower liquor licence density in the locality (5.1, A5); 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 (5.3, A5); and no consideration of the SEIFA indexes for the locality (5.4, A5);
- there is no BWS Store in the locality and this offering will provide a different product range (5.7, A5);
- 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 (5.8, A5);
- the proposed site is not considered a congregation area for school children nor is there considered to be any risk of minors being exposed to liquor products (5.9, A5);
- there are no cultural risks associated with the application or harm to places of worship (5.10, A5);
- there are no aged care facilities in close proximity which may give rise to risks to residents (5.11, A5);
- aside from DASSA, none of the other 44 interest groups and stakeholders who were notified of the application responded or raised concerns in relation to the application (5.12, A5);
- SAPOL and the local council, City of Salisbury did not object to the application (5.13, A5);

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The Applicant submits that it is an experienced operator of licensed premises and notes that the Authority has previously acknowledged this in Order Number B233449 in *BWS Mount Gambier*:

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

The Applicant also refers to the site specific security measures it will put in place (at 5.16, A5) and notes that it has committed to a Sustainability Strategy which sets out various goals and commitments it seeks to achieve in relation to the responsible service and consumption of alcohol and cites statements of the Applicant's CEO and Managing Director Mr Stephen Donohue in support of this. (5.17, A5);

The Applicant submits that in light of the matters above that there is no evidence that: the proposed BWS store will negatively impact on the activities in community buildings or facilities; the application will result in an unacceptable level of increased harm due to the excessive or inappropriate consumption of liquor, either to the relevant community as a whole, or to any group within the community (6.1-6.2, A5).

The Applicant submits that it is unlikely that the grant of the application would result in a change to existing consumer behaviour as to the type or quantity of alcohol consumed, and it will not introduce new drinkers to the market, and that the risk of harm posed is therefore very low (6.3-6.4, A5).

The Applicant makes a number of general comments about Dr Livingston's submission and the research he has relied upon (7.1-7.5, A5), and refers to the conclusion of Dr Henstridge (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 (7.9, A5). The Applicant also takes issue with RACS objecting to the application "*without RACS having had regard to the particular circumstances of the application. The effect of RACS's submission is one of general opposition to any new licence*" (7.10, A5).

The Applicant also notes that the ANROWS submission does not mention anything about packaged liquor, but rather focuses on the harm associated with alcohol consumption generally. While the applicant accepts that any liquor application may pose some risk of harm, it contends 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 the risk posed by the grant of the application is low such that it is in the community interest for the application to be granted (7.11, A5).

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 staff members. 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*" (10.4.1, CIR).

MasterPlan do not comment specifically on the impact that the grant of the application may have on any other PLSL store in the locality, but do concede that some competing stores may

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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 (10.4.3, CIR).

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), which 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”* (10.4.4, CIR), and that *“the co-location of the new store within the centre and adjacent to Woolworths supermarket will provide greater convenience to those person 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”* (10.4.5, 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 place limited weight on this benefit given the concession by MasterPlan that employment hours may be reduced at other licensed premises within the locality..

Social impact and impact on the amenity of the locality

MasterPlan state that the locality has a significantly lower crime rate across almost every recordable offence type compared to the State average (10.3.3, CIR).

The most common offence within 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 particularly relevant to the proposed PLSL outlet. The equal sixth most common offence recorded for the locality is ‘theft from shop’, however, the Applicant maintains that a low percentage of this offence was recorded in the suburb of Para Hills which indicates that theft is not prevalent within the locality (10.3.5, CIR).

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 this locality would lead to increased crime levels”* (10.3.6, CIR).

MasterPlan submit that whilst consideration of the relevant statistics is relevant to my consideration of the present application, *“caution must be exercised when assessing SAPOL crime statistics. Individual statistics for example 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”* (10.3.16, CIR).

MasterPlan provide some analysis of the unemployment rate in the locality and note that unemployment ranges between 3 percent at Modbury Heights and 7 percent at Salisbury East. Para Hills and Ingle Farm are the two largest suburban areas within the locality, representing 84 percent of the area, and each had an unemployment rate of 6 percent, which is lower than the Greater Adelaide average of 6.5 percent (10.3.14, CIR).

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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 the locality records lower indexes across all four measurable criteria compared to Greater Adelaide. This indicates that the locality has a lower socio-economic status compared to the broader metropolitan area (10.3.8, CIR).

The highest scoring SEIFA index for the locality is the 'Index of Economic Resources' at 4.24 (out of a possible 10). MasterPlan submit that this score indicates that the majority of households have slightly lower incomes compared to Greater Adelaide (at 5.07). Despite the lower score, this index has the smallest disparity with the equivalent index for Greater Adelaide, indicating that the economic standing of the locality is not significantly below that of the broader metropolitan area (10.3.9, CIR).

The lowest scoring SEIFA index for the locality is the 'Index of Education and Occupation' at 2.87. This low score is often a reflection of factors such as a low-skilled workforce, limited qualifications or a higher unemployment rate. MasterPlan note that this score also has the greatest disparity with the corresponding Greater Adelaide score of 6.85 (10.3.12, 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 as there is a very low density of licensed outlets in the locality compared to the State average, with no existing outlets in the Para Hills Mall Shopping Centre, the proposed outlet "*would not contribute to a high outlet density, which in turn would lead to relatively challenging circumstances*" (10.3.27, 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. 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*" (10.3.26, CIR).

MasterPlan submit that the co-location of the proposed BWS Store within the Shopping Centre and close 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 location and under the same roof in one trip*" (10.4.5, 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 13,735 customer transactions per week (over 700,000 per year (18.7, A1). It is not

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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 to be very convenient.

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 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 269 people who answered the first 3 survey questions and 213 who answered the fourth question. Of these 79.2 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?”* (11.2-11.3, 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 Para Hills 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”* (11.5, CIR).

The Applicant engaged in community consultation by writing to 44 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 DASSA (on behalf of SA Health), which MasterPlan describe as being “advisory in nature” (11.1, 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.

Submission by the Objectors opposing the application (AHA2) and the Applicant’s submissions in reply (A2)

A submission opposing the grant of the application was received from the Australian Hotels Association (AHA), which is summarised below, together with the submissions in reply received from the Applicant.

The AHA makes various submissions opposing the grant of the application, including, relevantly:

- the decision to allow the Applicant to vary its application is void *“as they were made without notice to AHA(SA) and without any grounds being advanced by the applicant to justify the grants”* (2, AHA2), and *“the decisions made on either 11 January or 12*

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January are thereby vitiated. That means that each of the within applications must be refused, as they must be determined as originally lodged. They fail for the reasons specified in the Cumberland park decision” (9, AHA2);

- the application ought to have been readvertised. “*The public should have had the opportunity to consider hat is an 11th hour change to several applications that were destined to fail, and to consider whether further submissions opposing the grants are appropriate” (10 to 12, AHA);*
- the change to the applications (due to the variation) are “so fundamental that each application is a new application” (18, AHA2);
- the AHA referred to the decision of *Hove Sip N Save* [2021] SALC and reference a number of observations by His Gilchrist J (19, AHA2), including at [139] “*it is not in the public interest for there to be an over supply of retail liquor outlets”;*
- the works required to enable entry/ exit from the proposed premises (on the application as varied) are not authorised by the development approval from the City of Salisbury, and there is no evidence of landlord consent (20, AHA2).
- There is a large, well-stocked and easy accessible Fassina liquor outlet nearby, and there are a number of schools in close proximity to the proposed premises. (20, AHA2).

I do not agree with the AHA’s procedural objections. The Authority has the discretion to allow an applicant to vary their application. I agree with the Applicant’s submissions about this (1.1 to 1.5.5, A4).

I do not consider that the application ought to have been readvertised or that once varied by the Applicant that it should have been regarded as a new application.

The Applicant has confirmed that, in accordance with s58 of the Act, all the relevant approvals, consents or exemptions that are required under the law to permit the use of the proposed premises for the sale of liquor have been obtained relating to the variation to the entrance of the proposed premises. (4.3.3, A4)

The Applicant has provided an analysis of liquor licence density (at 4.4, A2) and submits that there is no basis for the objector to assert that there will be an oversupply of take away liquor facilities in the locality by the addition of the proposed BWS store. The overall density will remain well under the State average.

The Applicant reiterates that the Fassina liquor outlet (as mentioned by the AHA) is approximately 500 metres away by road from the Para Hills Mall Shopping Centre and is not situated with other retail shops or a supermarket, and does not provide for the convenience of one stop shopping (4.4.4, A4).

The Applicant refers to the Court’s decision in *Hove* and Gilchrist J’s comments on discretion at [138] noting that these comments were made having regard to the “*relatively small number of the local community who visit the Hove Shopping Centre*”. This is in stark contrast to the subject centre at Para Hills which is well supported by the local community and where the Woolworths supermarket averages approximately 13,735 customer transactions per week (4.4.5, A4).

The Applicant maintains that the decision in *Hove* can be readily distinguished for the following reasons:

- General quality of the application – in *Hove*, the Commissioner at first instance was critical of certain deficiencies in relation to that application such as a lack of statistics and general information about facilities in the locality or vulnerable groups. There are no such deficiencies with the Para Hills application;

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- size of proposed liquor store – the *Hove* site (at 100m² plus 20m² of storage) was smaller than that proposed at Para Hills by the Applicant, being a store of approximately 175m²
- petition evidence – in *Hove*, the Court ultimately ignored the petition produced by the applicant due to obvious deficiencies. None of these matters are an issue with respect to the online survey of Woolworths' supermarket customers at Para Hills who clearly support a BWS being introduced at the site;
- experience selling takeaway liquor – in *Hove* the applicant had no experience selling take away liquor whatsoever, in this instance, the Applicant is an extremely experienced retail liquor operator with very sound policies and procedures;
- policies and Procedures – in *Hove*, the applicant sought to rely on access to certain policies and procedures through a franchisor and had not developed its own policies, In this instance, the Applicant has extensive policies and procedures of its own;
- range – in *Hove*, the proposed range was approximately 1,350 product lines, here, the Applicant is proposing a range of approximately 1,815 lines; and
- adjacent supermarket – the Foodland supermarket in *Hove* only received approximately 6,200 transactions per week with a turnover of approximately \$150,000.00 per week. By contrast, the Woolworths supermarket at Para Hills averages approximately 13,735 customer transactions per week and is more than twice the size of the Hove Foodland.

The Applicant confirms that it wrote to all the schools within the 2km radius of the defined locality, and that none of the schools mentioned by the AHA, replied to the Applicant, nor lodged submissions opposing the grant.

The Applicant contends (at 11, A4) that its application is in the public interest as:

- it is ultimately a modest application that 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 popular supermarket;
- it will provide the public with a convenient one stop shopping opportunity in a modern bottle shop not attached to a hotel drive through;
- there is no packaged liquor sales licence associated with a supermarket or within a shopping centre in the locality;
- no key stakeholders or interest groups have opposed the Application;
- the grant of the application will make the shopping centre more popular than it already is;
- new employment opportunities will be created in terms of the construction and fit out of the store as well as the operation of the store; and
- there is no evidence the application would result in an unacceptable level of increased harm and, in any event, the proposed premises will be operated by a very experienced and reputable licensee.

Decision

The expert engaged by the Applicant has adopted a 2-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

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significant 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 Para Hills Mall Shopping 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 more 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 the recent decisions in *Liquorland Park Holme* and *Hove Sip N Save*.

I note that SAPOL and the City of Salisbury have not objected to the application.

The Applicant, through its lawyers, wrote to various (44) 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.

I have considered the matters raised by DASSA and the 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 in *Liquorland Park Holme* at [43] – [44] 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 (10.3.3, CIR).

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It is clear from the expert evidence put forward by the Applicant that the liquor licence density for the locality is significantly lower than the State average 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.

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.

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey in which over 79 percent of the people surveyed would support an application to establish a BWS store at the Site, and 95 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.

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.

There is no evidence before me that suggests the locality in question is particularly vulnerable, or that the present application poses anything but a low risk of harm to the community, particularly in light of the Applicant's experience as a liquor retailer and strong history of compliance with the laws in this State, along with its use of technology and sound policies and procedures to manage and mitigate the risk of harm to its customers and the community. It is also clear from the liquor licence density calculations that the locality is not 'awash' with packaged liquor outlets, in fact, the density ratio in the locality is well below the state average. On that basis the application need not be refused on the basis of proliferation concerns.

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

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Authority when performing the evaluative exercise of determining whether or not it is in the community interest to grant the application.

While accepting that general convenience and the desire for “one-stop shopping” is a factor to weigh in the balance of whether an application might be in the community interest, in my view, convenience does not equate to elimination of all inconvenience. The remarks of King CJ in *Lovell v New World Supermarket Pty Ltd* applied by Gilchrist J in *Hove Sipp n Save* [2021] SALC 7 at [136] are apposite:

Inconvenience in gaining access to the required liquor is undoubtedly relevant to the determination of the question whether the public demand for liquor in the locality cannot be met by the existing facilities but it is not of itself decisive. If, for example, there existed an accessible first grade bottle shop at a distance of, say, 200 or 300 metres from the shopping centre, it would be absurd to suggest that the demand for liquor by customers of the shopping centre could not be met simply because they would have to drive their cars a short distance from the general shopping centre in order to obtain their liquor. To attempt to provide access to a full range of liquor for everybody who is without the use of a motor car would result in a wholly undesirable proliferation of liquor outlets with consequent deterioration of the standards in the service of liquor which are necessary in the public interest. It is, however, a matter of degree.

This is ‘on point’ in respect of the present application where those shopping at the Para Hills Mall Shopping Centre need only drive 500 metres down to the road to obtain packaged liquor from Fassina Liquor.

I note that the residents in this locality do not presently have the convenience of one-stop shopping for their liquor and grocery items, but given the limited number of tenancies in the Para Hills Mall Shopping Centre, I consider that Gilchrist J’s observations in *BWS Seaford* [2015] SALC 19 [at 79] are apposite and I cannot approach the determination of this application from the premise that granting this application will, for most, provide for one-stop-shopping for those residing in the locality.

Having considered the evidence and performing evaluative exercise that the Act requires, I am not satisfied that the positive aspects of the application identified by the Applicant and MasterPlan, and in particular the employment opportunities and increased convenience that will flow from the grant of this application, outweigh the potential negative aspects of approving the application, namely, the risk of alcohol-related harm, or that the grant of the application is in the community interest.

Additionally, having considered the broad public interest discretion available in s 53 of the Act, I am also of the view that it would not be in the public interest to grant this application as the potential benefits that may accrue with the grant of this application are not sufficient to offset or counter-balance the potential harm that may be caused to members of the community in the event the application were to be granted.

Accordingly, the application by BWS for a PLSL at Para Hills Mall Shopping Centre is refused.

Dini Soulio
Liquor and Gambling Commissioner