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BWS West Lakes PLSL Application Decision (No.204088)

Endeavour Group Limited (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at 111 West Lakes Boulevard, West Lakes 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 the Australian Hotels Association (SA) (**the 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 Community Impact Report, dated 14 July 2020 (**CIR**)
- Applicant's Covering Letter and Submissions dated 15 July 2020 (**A1**)
- AHA's Submissions received on 19 October 2020, objecting to the application (**AHA1**)
- Applicant's Submissions in reply dated 20 November 2020 (**A2**)
- AHA's Supplementary Submission dated 2 February 2021 (**AHA2**)
- 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**)
- Submission from the City of Charles Sturt dated 9 March 2022 (**Council Submission**);
- Submission in Reply from Applicant dated 17 March 2022 (**A5**)

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 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 **(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

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(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 such 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 employed through its supply chains (4.4, CIR).

Background / Nature of the Proposed Offering

West Lakes Shopping Centre (**the Shopping Centre**) is owned by the Scentre Group Limited, is 12 kms from the Adelaide CBD, has a gross lettable area of 71,244 square metres, and attracts 7.1 million customers annually with an annual retail spend per capita of \$13,466, which Masterplan observe as being “*broadly in line with the Adelaide Metro average (\$13,738)*” (3.1, CIR). The Shopping Centre is supported by 3,909 parking spaces (3.9, CIR), and is classified as a Major Regional Centre in the Property Council of Australia Shopping Centre Directory (3.11, CIR). Masterplan submit that it is “*by far the largest retail centre in the north-western region of Greater Adelaide*” (3.12, CIR).

Woolworths Supermarket (**Woolworths Supermarket**) is located within the Shopping Centre and has been in operation for over 40 years, with a trading floor area of 2,894 square metres, and a non-trading floor area of 1,382 square metres (4,277 square metres in total), with an average of 19,678 customer transactions per week (3.2, CIR), and caters to a trade area population of 206,000 residents. Masterplan submits that the Primary Trade Area has a broad range of ages and life stages that are broadly consistent with the metropolitan average (3.4, CIR).

Masterplan observe that the Shopping Centre is anchored by the following stores:

- David Jones Department Store (6,712 square metres)
- Target Discount Department Store (7,100 square metres)
- Kmart Discount Department Store (6,493 square metres)
- Coles Supermarket (4,147 square metres)

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- Woolworths Supermarket (3,939 square metres)¹
- Harris Scarfe Department Store (2,755 square metres)
- Rebel Sport (1,359 square metres)
- JB hi-Fi (1,108 square metres)
- Reading Cinemas with 7 screens (4,325 square metres) (3.6, CIR).

Masterplan provide a list of all other shops and services in the Shopping Centre at Attachment B of the CIR, and note that presently there is only one PLSL outlet, Liquorland, at the Shopping Centre, which is located adjacent to Coles Supermarket (3.7, CIR).

Masterplan contend that it is unusual for a shopping centre the size of the West Lakes Shopping Centre to only have one PLSL outlet, and points to research by Endeavour Group (contained in Attachment C, CIR) in support of this, noting that Westfield Marion Shopping Centre operates at a regional centre scale and has 3 PLSL outlets, namely BWS, Liquorland and a Dan Murphy's (3.7, CIR).

The Applicant submits that the proposed BWS Store will be a modern, safe and clean store with a comprehensive range of quality liquor and associated products and services (11, A1).

The proposed offering would involve internal modifications to the existing West Lakes Woolworths' Supermarket to create a separate shop of 203 square metres within its footprint. Whilst Masterplan state that all building works will be within the internal building footprint of the Supermarket and estimate that this will cost in the vicinity of \$400,000 - \$500,000 (5.1-5.2, CIR), I note that the CIR was prepared before the Applicant sought approval to modify the plans, and consequently the modifications required may no longer be entirely internal to the Woolworths Store, given that the entry/exit doors will open into a mall in the Shopping Centre.

Masterplan submit that the PLSL outlet (as originally proposed) would be separated from the Supermarket trading area by a non-transparent partition wall, and that a roller door built into the partition wall will enable staff access from the Supermarket to the outlet's 17 square metre liquor stock room (5.3, CIR), and provided a floorplan at Attachment E of the CIR, with the (initial) proposed layout of the outlet depicted at Figure 2 on page 10 of the CIR. Subsequently, by letter dated 11 January 2021, the Applicant applied to the Licensing Authority to vary the floor plan so as to change the entry/exit door from a position inside the Woolworth's Store, which would have required customers to traverse part of the Woolworths' Supermarket, to gain access to the BWS Store.

The application to vary was likely made in response to my decision in *BWS Cumberland Park* in December 2020 where I refused the application on the basis that the plans required customers to walk through the Woolworths' store past the checkouts. That floor plan, in my view, breached the requirement in s 38 of the Act for licensed premises to be physically separate from premises used for other commercial premises.

The Applicant's amended plans are different from the original plans in the Masterplan CIR, in that a new wall will be constructed where the customer entry was previously proposed, and a new opening will be constructed to enable customers to enter/exit the proposed premises via the common mall area of the Shopping Centre. I have reviewed the plans as amended and am of the view that the amended plans no longer 'offend' the physical separation requirements

¹ For completeness I note that the total floor space for Woolworths is stated by Masterplan to be 4,277.16 square metres at 3.2 of the CIR, whereas at 3.6 of the CIR Masterplan provide a slightly different figure of 3,939 square metres.

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contained in s 38 of the Act, and consequently the application need not be refused on that basis.

The AHA has filed submissions (AHA2) that take issue with the Authority's decision to allow BWS to amend the plans for a number of BWS' PLSL applications before the Authority, submitting that there was a lack of procedural fairness afforded to the AHA to make submissions against the variations being permitted, that the applications should all have been readvertised, that there was a lack of any, or adequate, reasons to explain the decision to grant the variations, and that ultimately the decisions to permit the variations are void. I do not agree with these submissions. I agree with the Applicant's submissions on this matter (A3).

It is clear that s 51(3) of the Act provides the Authority with the discretion to allow an Applicant to vary their application at any time before the application is decided, and that s 51(4) requires the Authority to ensure that other parties to the application and any person who made submissions are given notice of any variation allowed, a reasonable time before the hearing or determination of the application. 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.

Masterplan contend 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 in one convenient location*" (3.2, CIR).

If constructed as proposed the BWS Store will be approximately 203 square metres and will be a separate tenancy to the Supermarket (walled off from that tenancy). I note that there will be an operational link between the 2 land stores (a roller door) and that stock for the BWS store will initially be delivered to the Supermarket loading bay, unpacked by Woolworth's back-of-house employees, and then hand-trolleyed to the proposed outlet's Liquor Stock room via the roller door (5.4, 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 exclusive imported and local brands (4.2 to 4.3, CIR).

MasterPlan states that the Woolworths Supermarket operates in accordance with an approval granted in Development Application 252/2497/04 to be used as a supermarket by the City of Charles Sturt; that a PLSL outlet is a 'shop' as defined in Schedule 1 of the *Development Regulations 2008* and that consequently "*no further consents or approvals required under the Development Act 1993*"; and that "*it will furthermore be located within the footprint of the existing supermarket. For these reasons, no further consents or approvals are required under the Development Act 1993 because there will be no change in the use of the site as a shop*" (7.2, CIR).

The AHA submits that the development approval is from 2004 and that as it is in excess of 16 years old, cannot reasonably be regarded as current, and that consequently the application must fail on that basis.

Additionally, the AHA notes (21, AHA2) that the development approval is qualified in the following terms:

For this development approval to remain valid, it must be substantially commenced within 12 months, and completed within 3 years of the date of this development approval unless extended by Council (pg3, Note 1, Attachment G)

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The Applicant has made submissions in reply stating that Mr Burns of Masterplan is an expert planner and is of the view “*that the proposed works will attract building rules consent only in due course but no further planning consent is required over and above what is already in place*” (4.2-4.3, CIR).

The Applicant has also provided evidence of the Landlord’s consent to the proposed BWS Store (Annexure, A3).

It was not clear from the application whether the development approval from 2004 had been extended by Council, beyond 3 years from the date of approval, or whether Council considers that the proposed offering is authorised by the development approval (granted over 16 years ago).

The AHA submits that:

No application for extension is attached to either the original application or to the letter of 11 January 2021. Building work has clearly not been completed. Hence this application must fail on this basis alone.

Next, the DA (even if current) approves “supermarket shop fit out and expansion into existing tenancy”. It says nothing about either the approval of licensed premises or the construction of a new store requiring separate access points”. (21, AHA2).

This is discussed in more detail below.

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 within the metropolitan will be the area within a 2km radius of the proposed offering.

Expert evidence in this matter, provided by MasterPlan on behalf of the Applicant considers that it is appropriate to instead adopt a 3 km radius for the present application, and provides reasoning in support of this (10, CIR). Locality is not in dispute and I am satisfied that Masterplan have currently identified the locality.

MasterPlan use SA1 ABS data districts to estimate that the locality has an approximate population of 32,160 persons (10.6, CIR).

Other Packaged Liquor Outlets in the Locality

The AHA notes that the following liquor facilities offering take away liquor are in close proximity to the proposed offering: West lakes Cellars; Lakes Resort Hotel; Liquorland; and Thirsty Camel Bartley Hotel, and submits that this is relevant to the oversupply and inconvenience comments made by His Honour Judge Gilchrist in Hove Sip N Save [2021] SALC 7 (**Hove**).

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The number of PLSL outlets presently located in the locality is relevant when calculating the liquor licence density for the locality in light of any 'proliferation' concerns, and is discussed in more detail below.

It is clear from both my own knowledge of the West lakes Shopping Centre and from reading sections 9.0 – 9.9 and Attachment D of the CIR that the proposed offering would be located only a very short distance from the existing Liquorland PLSL store in the Shopping Centre (which is adjacent to Coles, and only a short distance from Woolworths), and that it would be located around 100 metres from West lakes Cellars (9.4, CIR).

One Stop shopping/ convenience

The Applicant submits that the proposed offering will provide added 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 (11.4.5, CIR).

While I am concerned about the issue of proliferation generally, 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, each application must be assessed on its own merits.

The liquor licence density is quite low compared to the State average and the locality is clearly not "awash" with packaged liquor outlets. This application should not be refused on the basis of proliferation concerns alone. That said, I am also mindful of His Honour Judge Gilchrist'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.

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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:

- *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 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 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 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 (19, A1), and refers to 11.2 and 11.3 of the CIR in support of this submission.

Masterplan provide analysis in relation to harm minimisation considerations and 'at-risk' groups and conclude "*the absence of buildings, facilities and areas within the locality that might otherwise support at-risk groups will help to ensure there is no over-representation of vulnerable people frequenting the proposed outlet*" (11.2.9, CIR).

The Applicant submits that:

- all schools and childcare centres within the locality are situated a substantial distance from the Site (19.8.1, A1 and 11.2.2 CIR);
- Masterplan do not consider that the proposed BWS Store would be a congregation area for school children (19.8.2, A1 and 11.2.3 CIR);
- there is no exposure risk for the proposed licensed premises for minors (19.8.3, A1)

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- all aged care facilities within the locality are situated a substantial distance from the Site (19.8.4, A1);
- there are no known drug and alcohol treatment facilities adjacent to the proposed outlet, or within the locality (19.8.5, A1);
- there are no other services, facilities, businesses or organisations frequented by “at-risk” persons for alcohol related harm nearby (19.8.6, A1);
- all places of worship within the locality are situated a substantial distance away from the Site (19.8.7, 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 (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] (19.8.8, CIR).

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.

The Applicant wrote to 80 key stakeholders and interest groups in relation to the application and only Drug and Alcohol Services SA (**DASSA**) responded on behalf of SA Health.

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

The Applicant has expressed confidence in its policies and procedures and points to the fact that it has not been involved in legal proceedings in South Australia involving the sale of liquor to minors (18.20, 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 (11.2.10, 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 (11.2.11, CIR and Attachment O);
- 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 (11.2.12, and Attachment P, CIR);
- MasterPlan submit that careful consideration will be 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

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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 (11.3.13, 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 (21, A1);
- incident registers are maintained in each BWS store so that any incidents are recorded and dealt with efficiently and appropriately (22, 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 (18.21, A1).

The locality has a higher crime rate across almost all recordable offence types when compared to the State average (11.3.2, CIR).

The most common offence in the locality is 'Theft from Motor Vehicle' which includes the theft of items from another person's motor vehicle, but does not include the theft of the vehicle itself, and is not considered particularly relevant to the proposed PLSL outlet (11.3.3, CIR).

The fourth most prevalent offence recorded for the locality is 'Theft from Shop' which is clearly more relevant. MasterPlan note that the proposed outlet will be fitted with "*state of the art technology to deter shoplifting and staff will be properly trained to identify potential behaviours that could be a precursor to shoplifting*" (11.3.4, CIR).

MasterPlan states that there is no evidence for the locality identifying what proportion of crime is related to the consumption of alcohol and there is no evidence to suggest that an additional packaged liquor sales outlet in West Lakes Shopping Centre would lead to increased crime levels (11.3.5, CIR).

In my view the Applicant has appropriately engaged and consulted with at-risk groups within the community and relevant stakeholders.

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 (11.2.11 and Attachment O, 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.

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- 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.
- 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.

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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.

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:

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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.

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:

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- 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.

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.

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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 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); whilst the locality has a higher crime rate compared to the State average, there is a 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 (7.2, A4); whilst the locality has a slightly lower socio-economic profile compared to the surrounding metropolitan area, the scores are still above the national average which suggests the residents of the locality are in a reasonably good socio-economic position overall (7.3, A4); the proposed offering is not a larger store, but rather a modest store operated by an experienced liquor retailer with sound policies and procedures (7.10, A4); the proposed site is not considered a congregation area for school children or minors (7.5, A4); there are no cultural risks with the application or harm to places of worship (7.6, A4); there are no aged care facilities in close proximity which may give rise to risks to residents (11.2.6, A4); and that aside from DASSA, none of the other 79 stakeholders or interest groups who were notified of the application responded or raised concerns in relation to the application (7.9, 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).

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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 (considered in the 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, submits 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 locality vis-à-vis South Australian averages per 100,000 persons (Table 2, 10.8, CIR), which show that there are a total of 1001 outlets (adding General and Hotel licences plus Packaged Liquor Sales Licence outlets together) for SA which equals a rate per 100,000 people of 59.70 for SA as a whole, compared to a rate of 21.44 for this locality, and state that "*this comparison shows that the State average for the number of such outlets per 100,000 persons is almost three-time greater than for the West Lakes locality*", and conclude that "*the locality has a very-low density of licensed premises when compared to South Australian as a whole*" (10.8, CIR).

In the event the present application is approved the combined figure for General and Hotel and PLSL outlets for the locality will still be well below the State average, and it is clear that the locality is not 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 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 contend that there will be an overall net benefit of total employment hours available to job seekers (11.4.3, 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), 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 "*an obvious benefit will be the provision of ready access to a purpose-built BWS 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 Woolworths supermarket footprint will provide added 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*" (11.4.5, CIR).

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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.

Social impact and impact on the amenity of the locality

MasterPlan note that the locality has a higher crime rate “*across almost every recordable offence type compared to the State average*” (11.3.2, CIR).

MasterPlan observe that “Theft from Shop” is the fourth most common offence recorded in the locality (11.3.4, CIR). From reviewing the SAPOL statistical data contained in Table 3 of the CIR (pg22), it is clear that this category of offending is higher within the locality (96.4 offences per 100,000 people) than the State average (64.6 offences per 100,000 people).

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 the addition of a new Packaged Liquor Sales Licence in West Lakes Shopping Centre would result in increased crime levels*” (11.3.5, CIR).

MasterPlan state that whilst consideration of the relevant statistics is relevant to my consideration of the application “*caution must be exercised when assessing statistics, particularly SAPOL crime statistics*” (11.3.15, CIR).

The unemployment rate for the SA2 suburbs within the locality ranges between 5 percent at West Lakes and 14.4 percent at port Adelaide, and Masterplan submits that West Lakes and Seaton – Grange are statistically significant as the largest suburban areas within the locality (77% at 14.56 square kilometres) and that the employment rate within these 2 SA2 suburbs was 5 percent and 6 percent, respectively (11.3.12, 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 Greater Adelaide.

MasterPlan notes that most indexes for the locality are lower compared with those of Greater Adelaide, which indicates that the locality, on average, has a lower socio-economic profile compared to the surrounding metropolitan area (11.3.7, CIR). Masterplan submit that the scores are relatively similar to the national SEIFA averages (of 5.00) and that this is suggestive that the residents in the locality are in a reasonably satisfactory socio-economic position when compared to the nation overall (11.3.8, CIR).

The highest scoring SEIFA index for the locality is the ‘Index of Education and Occupation’ at 5.12 (out of a possible 10). MasterPlan submit that this score indicates that the population of the locality have a slightly higher-than-average education, as many have qualifications, and suggests the locality comprises a reasonably skilled workforce (11.3.9, CIR).

The lowest scoring SEIFA index for the locality is the ‘Index of Economic Resources’ at 4.59, which MasterPlan note is relatively equal to the score for Greater Adelaide (at 5.07) which

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indicates that the broad economic status is comparative to Greater Adelaide and Australia (11.3.10, CIR).

MasterPlan submit that “*it is unlikely that a second packaged Sale Licence Liquor outlet in West Lakes shopping centre will result in an expansion of the market*”, but rather, sales will be diverted away from the only other existing PLSL outlet in the centre (Liquorland) (11.3.14, CIR).

MasterPlan provide commentary and analysis of the existing licensed premises in the locality, noting that the locality has 2 existing PLSL outlets, as well as 5 General and Hotel Liquor Licences (9 – 9.6 and Attachment H, CIR).

After discussing the various other packaged liquor options available in the locality, MasterPlan ultimately conclude that the locality has a very-low density of licensed premises selling packaged take away liquor when compared to South Australia as a whole (10.8, 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, that will provide increased choice and competition in the locality (11, A1).

It is clear from the CIR that a significant number of customers shop at the Supermarket, with around 19,678 customer transactions per week (approximately 1,000,000 per annum) (18.1.6, 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 as shopping for groceries. 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 Licencing 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 Sip 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.

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 378 people who

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answered the first three survey questions and 334 who answered the fourth question. Of these 88.4 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?*” (12.3, 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 West Lakes 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 80 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 (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 T, CIR). The research referred to is not cited or included in the letter.

Submission by the AHA opposing the application (AHA1)

A submission opposing the grant of the application was received from the AHA, which is summarised below.

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

- that the grant of the (original) application would ‘offend’ the requirements in s 38 of the Act (I note that the Applicant was granted leave to amend its application and this ground of objection is no longer relevant);
- that the Applicant does not have the required development consent or approvals (discussed in more detail above and below);
- that the Applicant has not provided evidence of landlord consent (this has now been provided and this ground of objection is no longer relevant – contained at Annexure, A3);

The Applicant submits that the grant of the application is in the community interest for a range of reasons, as summarised below:

- the Shopping Centre is a substantial site and retail offering in a major regional centre, is easily accessible and well serviced by public transport (18.1, A1), and given the size of the centre, the introduction of a second bottleshop to the centre is in the community interest (18.4.8, A1);
- the new BWS Store will offer a different product range, prices and specials to the other licensed premises (18.4.1, A1);
- BWS has proven itself to be a very good and safe operator of packaged liquor facilities (18.4.3, A1);

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- Masterplan's analysis demonstrates that there are hundreds of shopping centres around Australia that have 2 or more bottle shops, which the Applicant says "*is indicative of a broader public interest in there being multiple packaged liquor facilities at major retail centres such as this*" (18.4.4, A1);
- there is no issue as to liquor licence density in the locality (18.4.6, A1);
- the BWS Store will complement the existing Woolworths Supermarket offering and will provide the public with more choice in terms of one-stop-shopping within the locality (18.4.7, A1);
- the BWS Store will have a positive impact on the amenity of the area as it will be a new, modern, safe and clean store (18.5, A1);
- there will be new employment opportunities in relation to the proposed BWS Store for residents in the locality (18.16, A1);
- there will be new employment opportunities in relation to the construction of the new BWS Store (18.17, A10);
- 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 (18.7, A1);
- 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 (18.12, A1);
- the operating hours are within those of the Supermarket and general Centre trading hours and will be convenient to customers of the Centre (18.13, A1); and
- the response from the community consultation undertaken has been overwhelmingly positive (18.15, A1).

Decision

The expert engaged by the Applicant has adopted a 3-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 many people who shop at the Shopping Centre live in the locality. The range of products the Applicant is proposing to provide is significant (approximately 1,800 lines of stock) and granting the application would be likely to result in a slight increase in convenience for those shopping in the locality who wish to purchase packaged liquor products from a BWS outlet when shopping at the Shopping Centre. Many of the local community can be expected to take advantage of the proposed premises, and many will find it to be 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 ([117] to [126] in the *Hove* decision are on point). One notable and important difference that distinguishes this application from the one under consideration in *Park Holme*, is that there is already a PLSL outlet located in the Shopping Centre, namely, Liquorland.

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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 AHA's submissions in light of Gilchrist J's decisions in *Park Holme* and *Hove*.

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

The Applicant, through its lawyers, wrote to 80 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 from DASSA (on behalf of SA Health).

I have considered the matters raised by DASSA and the AHA's 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* decision 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 has a higher 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 significantly lower than the State average, and that the locality is clearly not 'awash' with take away liquor facilities.

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 significantly reduce and help to 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

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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. As stated earlier, I place limited weight on this given that the grant of this application may result in reduced employment hours at other take away liquor outlets 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 88 percent of the people surveyed would support an application to establish a BWS store in the Shopping Centre next to the existing Woolworths Supermarket (12.3 and Attachment U, CIR).

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 in relation to 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.

However, on the material before me, and having considered the AHA's submissions about the Development Application, I was not satisfied that the relevant consents and development approvals are in place to permit development of the proposed premises, and sought comment from the City of Charles Sturt in relation to the following matters:

- 1) whether the Council has ever consented to extending the Development Application beyond 3 years (and if so, that a copy of any documents confirming that such consent was given, be provided to the Authority); and
- 2) advice from Council as to whether in its view the Development Approval granted in 2004 (Development Number 252/2497/04), where the nature of the approved development was described as "Woolworths Supermarket shop fit-out and expansion into existing tenancy" would authorise the Applicant, from a council development consent perspective, to construct a licensed packaged liquor store in 2022 that will be operated by another company as a separate shop that is walled off from Woolworths, and will have a separate entrance into the mall of the West Lakes Shopping Centre.

On 9 March 2022 Planning Compliance Officer Brooke Seal responded on behalf of the City of Charles Sturt to the invitation to provide a submission, advising:

Council has no concerns with regards to who owns or operates the bottle shop. The only concern from a building point of view is the new opening structurally and ensuring that it is appropriate width for egress and exit sign which a private certifier will ensue as I expect they will engage one.

Once they are ready to submit their application for a shop fit-out they will be required to upload through the Plan SA portal.

Consistent with my Practice Direction, the Applicant was invited to provide a submission in reply to the Council Submission. The Applicant filed a submission in reply, dated 17 March

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2022 (A5), noting that it had liaised with Masterplan in relation to the Council's correspondence and submitted:

1. there are no issues as to the underlying planning consent in relation to the land. Council's correspondence reinforces that no further planning consent is required in relation to the use of the land as a shop as converting a portion of the supermarket to a bottle shop does not have the effect of changing the use of the land. In other words, all required planning consents are in place in order for the application to be determined;
2. Council is otherwise advising that the proposed alterations to the premises may require building rules consent. The Applicant accepts building consent may be required to be obtained from the Council at a later date and will make application in due course, if required, pending the outcome of this application.

With respect to item 2 above, we note the Commissioner has the power, pursuant to section 59(1) of the *Liquor Licensing Act 1997*, to grant a certificate of approval approving the plans submitted by the Applicant in respect of the proposed premises where the Applicant has obtained relevant planning approval(s) to permit the use of the proposed premises.

Having considered the Development Approval, submissions of the parties, opinion proffered by Mr Burns of Masterplan, and the response from the City of Charles Sturt, it would appear that the relevant approvals, consents and exemptions required for carrying on the proposed business have been obtained by the Applicant, although little turns on this, and I do not need to finally resolve this issue, for reasons that will become apparent below.

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 Applicant has made submissions regarding the convenience of co-locating a BWS store to Woolworths in the Shopping Centre. When considering the question of whether granting the present application is in the public interest, I note that in *Hove*, Gilchrist J cited factors relevant to the exercise of the public interest discretion:

In *Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd* Doyle CJ discussed a number of factors relevant to the exercise of the public interest discretion. He made the point that the discretion must be exercised for a purpose consistent with the Act, and to advance or to maintain principles and policies found in the Act, or which the Court in its experience finds appropriate or necessary in the proper application of the Act.² Having cautioned against the Court using 'the discretion as a basis for imposing views about what is desirable' he stated that it could do so if the views were 'firmly linked to the principles on which the Act operates or is administered.'²

The Object of the Act is to regulate and control the promotion, sale, supply and consumption of liquor. This includes 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

² *Hove Sip n Save* [2021] SALC 7 at [131].

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consumption of liquor. Relevantly, harm includes adverse effects on a person's health and alcohol abuse or misuse.

I consider that the minimisation of harm and the potential for harm are relevant considerations to weigh against co-location of takeaway liquor and supermarkets. The proposed premises will be positioned directly adjacent to the Woolworths supermarket in circumstances where there is already a Liquorland outlet adjacent to the Coles supermarket in the Centre that is only a very short distance away (as per Attachment D, CIR). This was a factor that weighed against the approval of the recent Liquorland McLaren Vale PLSL application, which I refused.

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. I consider it is relevant that nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets and this proportion has been steadily increasing.³ I also consider the following submission from ANROWS has general application and relevance:

Other recent research into the impact of alcohol related harm in families and alcohol consumption during the COVID-19 pandemic highlighted that the changes to alcohol consumption during large-scale disasters may increase harm in families (Farrugia & Hinkley, 2021). For example, women with carer responsibilities were found to be at greater risk of increasing alcohol consumption and alcohol-related harm. The findings indicate that there is a need for greater community awareness of the connection between alcohol consumption due to COVID-19 and the risk of alcohol-related harm.⁴

I agree with the conclusion drawn by Dr Crozier and Mr Bautz in the RACS Submission:

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.⁵

While the effects and impacts of the COVID-19 pandemic may ease, the observations above are in my view, nonetheless relevant to highlight that as Liquor and Gambling Commissioner, I must proceed with extra caution in considering packaged liquor store applications co-located with supermarkets which would have the effect of increasing the accessibility and exposure of alcohol to residents in that community.

For those reasons, I consider the considerations of harm are not only relevant to community interest (that is, affecting the locality), but also the public interest as to grant this application, would in my view, create an undesirable precedent likely to result in the wholesale alignment of packaged liquor stores with supermarkets. As noted by the Court in *Hove*, the legislature has made a clear policy decision not to go down this path.

In my view granting this application is not in the community interest, as 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 the Shopping Centre and wish to

³ Professor Livingston submission at p. 1 citing Euromonitor International (2019) Passport: Alcoholic drinks in Australia (London, Euromonitor).

⁴ ANROWS Submission at pp. 2-3.

⁵ RACS submission at p. 4.

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purchase packaged liquor from a BWS outlet (as opposed to a Liquorland outlet at the Centre) whilst shopping there. I am also mindful that West lakes cellars is only 100 metres away from the proposed offering, so it can hardly be said that shoppers presently face any inconvenience that the grant of this application would address.

Whilst the grant of the application would result in even more convenience for some customers, the locality already provides opportunities for one-stop-shopping, and there is already a PLSL outlet located in the Shopping Centre. Consequently, the grant of the application could only provide some shoppers with yet even more convenience in circumstances where they already enjoy significant convenience. I would also observe that given the size of the West Lakes Shopping Centre, there would be a stronger basis for the grant of an additional PLSL application on convenience grounds if the proposed offering was to be located on the other side of the shopping complex, as opposed to an additional outlet to be located adjacent to the existing Liquorland outlet.

I have considered the Applicant's submissions 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 things 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. There is already one PLSL outlet in the shopping centre and that is ample to provide convenience and one-stop-shopping for those customers wishing to purchase liquor at the same time as grocery shopping.

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 consumers already have one-stop-shop options and enjoy significant convenience, and where there is already a PLSL outlet in the Shopping Centre only a short walk away from the proposed offering.

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Accordingly, BWS' application for a Packaged Liquor Sales Licence at West Lakes Shopping Centre is refused.

Dini Soulio
Liquor and Gambling Commissioner
16 May 2022