

BWS Woodcroft (Application No. 204464)

Application for Packaged Liquor Sales Licence

Endeavour Group Limited (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at Shop 10-11 Woodcroft Plaza Shopping Centre, 217 Pimpala Road, Woodcroft SA (**the Site**), to be known as BWS – Beer Wine Spirits (**the 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 Carleton Investments Pty Ltd (**the Objector**) 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 23 September 2020 (**CIR**)
- Applicant's Covering Letter and Submissions dated 24 September 2020 (**A1**)
- Carleton Investments Pty Ltd (T/A Woodcroft Tavern) Submissions received on 11 November 2020, objecting to the application (**Ob1**)
- Applicant's Submissions in reply dated 4 December 2020 (**A2**)
- Objectors' Further Submission dated 3 February 2021 (**Ob2**)
- Applicant's Further Submissions, dated 5 March 2021 (**A3**)
- Letter from the Australian Competition and Consumer Commission (**ACCC**) to the Liquor and Gambling Commissioner dated 23 June 2021 (**ACCC Letter**)
- Submission of Associate Professor Michael Livingston dated 5 July 2021 (**Professor Livingston Submission**)
- Submission of the Royal Australasian College of Surgeons dated 23 July 2021 (**RACS Submission**)
- Submission of Australia's National Research Organisation for Women's Safety dated 30 July 2021 (**ANROWS Submission**)
- Applicant's Submissions in reply to Professor Livingston, RACS, and ANROWS dated 25 February 2022 (**A4**)

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

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

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

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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 Services (**CBS**) Community Impact Portal; a business plan/plan of management; and a site or property plan, floor plan and/or photographs/artists impressions of the site/building.

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

Section 3(1) of the Act provides that:

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

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

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

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

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

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

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

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

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

(d) alcohol abuse or misuse; and

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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 matters such as: the suitability of the premises; the potential for them to cause undue offence, annoyance, disturbance or inconvenience to nearby residents, workers and worshippers in the vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools in the vicinity of the premises; and whether the appropriate approvals, consents and exemptions, in respect of the proposed premises have been obtained.

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

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

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

Background / Nature of the Proposed Offering

The Woolworths Supermarket at 217 Pimpala Road, Woodcroft SA (**Supermarket**), is a full-line supermarket that has been in operation for over 40 years and has around 21,000 transactions a week (3.1 and 8.9, CIR).

The Applicant contends that the proposed offering will provide customers with a one-stop-shopping experience “so that they can *purchase their grocery and drinks needs in one convenient location*” (3.1, CIR).

If constructed as proposed the BWS Store will be approximately 213 square metres and will be located within the footprint of the Woodcroft Market Plaza Shopping Centre (**Shopping Centre**) but will be physically separate from other tenancies. The BWS Store will be located 70 metres to the West of the plaza entry into the Supermarket, and customer access will be obtained via double doors at the front of the BWS Store. Stock will be received at the rear of the BWS Store and will be unloaded into the stock room via an external roller door (5.1 - 5.5, CIR). Consequently, no s 38 separation issue arises in respect of this application, as the proposed BWS Store is physically separate from other commercial premises in the sense required by the Act.

The Shopping Centre has a gross leasable area of 5,325 square metres (8.2, CIR), and comprises the Supermarket (3,880 square metres total floor space), in addition to a number of other smaller tenancies, as detailed at 8.4 of the CIR, and is supported by 304 car parking spaces (8.0 – 8.4 CIR).

MasterPlan note that the proposed outlet will operate in accordance with an approval granted to Development Application 145/2660/2019 by the City of Onkaparinga to convert the shop

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from its approved use as a gymnasium into its proposed use as a shop (7.1, CIR), and that a the packaged liquor sales licence outlet is defined as a 'shop' in accordance with Schedule 1 of the *Development Regulations 2008* (7.2, CIR), and refers to correspondence from the Council advising that it had no objection to the Commission granting a liquor licence for a bottle shop, subject to receiving Building Rules Consent and Development Approval and associated approvals (7.3-7.4, 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 imported and local brands (4.2, 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, including an extensive range of beer, wine and spirits that will provide increased choice to customers (7, A1 and 14.4, A1).

Locality

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

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

The Guidelines suggest as a guide that the locality of licensed premises within the Adelaide Metropolitan Area will be the area within a 2km radius of the proposed offering:

Adelaide Metropolitan Area: The locality of a premises in the Adelaide Metropolitan Area can be regarded as the area within a 2km radius of the site of the relevant premises.

A list of the suburbs considered to be in the Adelaide Metropolitan Area can be found at Schedule 2(b). The list is intended to be used as a guide only.

Expert evidence provided by MasterPlan on behalf of the Applicant states that the locality "*is defined generally by a circle with a radius of not more than 2.0 kilometres which is centred on the site of the proposed premises*" (10.12, CIR), and captures the lower foothills of the Mount Lofty Ranges to the east and extends no further west than Old South Road at Reynella, including the entire suburb of Woodcroft, and parts of Reynella East, Happy Valley, Old Reynella, and Morphett Vale (10.12, CIR).

The Objector takes issue with the locality as identified by MasterPlan and adopts the description of "the locality" described by the Licensing Court in *BWS Woodcroft* [2016] SALC (***BWS Woodcroft 2016***) 35 at para 26 (10-16, Ob.1), and notes that Masterplan excludes BWS Happy Valley, Liquorland Southgate, and Emu Hotel Cellarbrations from the locality, whilst in *BWS Woodcroft 2016* the Court considered that all of those outlets must be considered as part of the locality (34, Ob.1).

The population of the locality, as per the CBS portal is 49,366 persons. MasterPlan note that this figure utilises SA2 collector districts and go on to provide what they contend is a more accurate population figure for the locality of 22,410 persons by utilising ABS data comprising SA1 districts (10.11, CIR).

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MasterPlan submit that the Shopping Centre is situated in a Neighbourhood Centre Zone, which is intended to be developed for “*a range of shopping, community business and recreational facilities for the surrounding neighbourhood*” (Zone Objective 1), and is intended to function as “*the main focus of business and community life outside a district centre, and provides for the more frequent and regularly recurring needs of a community*” (Zone Objective 2) (8.10, CIR). Masterplan submit that the Neighbourhood Centre Zone “*is intended to provide the Woodcroft neighbourhood with buildings which can be used to display and sell products and services that are easily and conveniently accessed*” (8.11, CIR).

Other Packaged Liquor Outlets in the Locality

Masterplan provide some discussion and analysis in relation to the existing licensed premises in the locality (9.0 - 9.10, Table 3 and Attachment E, CIR), and draw the following conclusions in relation to licence density:

Table 3 indicates that South Australia on average has a far higher density of licensed outlets than the Woodcroft area. The average State density for Packaged Liquor Sales Licences is greater than three times that of the Woodcroft area, relative to a rate of 100,000 persons.

Similarly, when comparing (the) number of General and Hotel Licence and packaged Liquor Sales Licence outlets per head of population, the State density is greater than twice that of the locality.

The area comprises a significantly lower density of licensed premises when compared to the South Australian average. (9.8 – 9.10, CIR).

The Objector submits that Masterplan have excluded BWS Happy Valley, Liquorland Southgate and Emu Hotel Cellarbrations from the locality, whereas the Licensing Court in *BWS Woodcroft 2016* was of the view that these outlets must be considered as part of the locality (34, Ob.1):

...the Masterplan calculation of licence density at 9.8 ignores the existence of a number of outlets just outside the 2km radius, which were found to be relevant in *BWS Woodcroft*, all of which renders the Masterplan density calculation of little if any assistance and probative value. (64, Ob.1).

The Objector refers to paragraph 180 of *BWS Woodcroft 2016*, where Gilchrist J observed:

Although many of those using the Woodcroft Market Plaza would find it very convenient to combine their takeaway liquor purchases with their use of that centre, the five minute drive that it would take to purchase takeaway liquor elsewhere, when measured by reference to contemporary standards, is not unreasonable. (35, Ob.1).

At paragraph 155 of *BWS Woodcroft 2016*, Gilchrist J, in referring to the findings of the Supreme Court in 2009 in *Carleton Investments Pty Ltd v J & B Development Investments Pty Ltd* [2009] SASC 282, observed:

Again these reasons are consistent with a finding that in 2008 there was not a community expectation that the Woodcroft Market Plaza shopping centre would contain a bottle shop.

The Objector submits that there is no evidence of any community expectation of a bottle shop being located in a shopping centre of this size in that location and that:

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On the approach being taken by Masterplan, it would be difficult to imagine a supermarket where a licence would not be justified on a “one stop shop” argument. That is plainly inconsistent with community expectation and public interest, and the Community Impact Assessment process and guidelines, and would reasonably lead to a flood of such licences and an undesirable proliferation of packaged liquor outlets, virtually “on every street corner”. (39, Ob.1).

MasterPlan confirm that BWS Happy Valley, Liquorland Southgate and the Emu Hotel are not within the locality as they have defined it (9.3, CIR).

The Objector submits that there is no suggestion that the existing outlets in the locality do not provide an adequate range and variety of liquor and shopping experiences, consistent with contemporary community expectations and the “*expectations and aspirations of the public*” as per s 3(1)(c) of the Act (41, Ob.1).

The Objector submits:

The applicant is not likely to provide anything other than what is already available in the locality and is simply proposing to provide “convenience” for a number of its supermarket patrons, who already have a number of one stop shop options in and about the locality. (83, Ob.1)

The area is already well served with a range of packaged liquor outlets. There is no evidence of inconvenience in the availability of packaged liquor at a diverse range of outlets to those living in the locality. (95, Ob.1).

The Objector has also attempted to distinguish the factual scenario of the present application from the facts under consideration in *Liquorland Park Holme* where Gilchrist J remarked at [41]:

The proposed premises will offer a point of difference to the other takeaway liquor facilities in the locality which has the potential to enhance competition, which in turn has the potential to improve the range, service and price of the takeaway liquor offerings in the locality.

The Objector submits that in this case no such point of difference or potential benefit has been established “*in proposing another ‘typical’ BWS liquor offering, where there are already 2 BWS outlets serving the locality, along with various other licensed outlets*”, and asserts that it would be “*contrary to the balance of the industry*” to grant the licence, observing that in *BWS Seaford* [2015] SALC 19 the Licensing Court refused a second BWS application that was to be located 2 kilometres from an existing BWS store, and that this proposed offering is to be located at an even closer distance than was the case in *Seaford* (57 and 58, Ob.1)

In response, the Applicant submits that the Objector operates a Thirsty Camel drive through bottle shop approximately 1.8kms from the proposed offering, is a commercial competitor and that its submissions “*must be viewed in this light*”, and notes that this is the only submission that has been lodged in respect of the application (1.1 - 1.3, A2).

Additionally, the Applicant submits that the Objector has consistently referred back to the findings of the Full Court and the Licensing Court in respect of previous applications to establish a store at this site and that those decisions were determined under the “needs” test which focused on the “adequacy” of existing facilities in the locality (1.6, A2), and notes the

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Court's decision in *Liquorland Park Holme* where the applicant had also been unsuccessful when applying under the earlier needs test, but where the Court clarified as follows:

The AHA points to the fact that within the locality are three take away liquor facilities: a BWS store about five hundred metres north of the proposed store, on the opposite side of Marion Road, and bottle shops attached to the Marion Hotel and the Morphett Arms Hotel. They add that immediately outside the two kilometre radius are take away liquor facilities attached to the Castle Tavern, the Tonsley Hotel and the Warradale Hotel and beyond that there are eight take away liquor facilities that are not that distant. **If this application had to meet the needs test, these facts would have been highly relevant. Indeed, they were to a large extent relied upon by this Court and the majority in the Full Court in rejecting a previous application by Liquorland at this site under the former test. Collectively those facilities are probably still adequately catering for the liquor needs of the residents of the locality as that locality was understood to be in that case. But this is not the test that must now be applied. It must be firmly understood that the issue in this case is not whether the grant of this application in respect of the proposed premises is necessary to service the public's needs.** That is no longer the test that the Court must apply and to continue to apply that test, or something like it, would be to ignore the clear directive of the Parliament to apply a new test, and would lead to error." **(emphasis added)**
(1.6.2, A2).

I am concerned about the issue of proliferation and do not see it as desirable from a public policy perspective for there to be a packaged liquor store aligned with all (or most) shopping centres across the State. That said, each application must be assessed on its own merits.

While it is clear that there are ample packaged liquor options available for consumers in and around the locality, I agree with the Applicant that the locality cannot be said to be "awash" with packaged liquor outlets and am of the view that the application should not be refused on the basis of liquor licence density considerations alone. That said, I am also mindful of Gilchrist J's observation in *Hove Sip 'n' Save* [2021] SALC 7 (**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:

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“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:

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

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

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

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

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

In the absence of a submission from the ACCC dealing specifically with this application, it is unclear whether 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 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 (16, A1), and refers to 11.3 of the CIR in support of this submission, as outlined below.

MasterPlan submit:

- that schools and childcare centres are evenly distributed and the proposed outlet is not situated in an area where young people would be expected to congregate and is not considered to represent a risk to that age group (11.2.3, CIR);

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- that the proposed outlet is not considered to represent a risk to other residents accommodated in aged and disabled facilities in the area generally, and those residents who are still active will be advantaged by having the outlet in close proximity. Masterplan believe that “*it is in the community interest that active and mobile residents in these retirement estates and other nearby facilities, can safely and conveniently access the proposed facility*” (11.2.8, CIR);
- that the absence of buildings and facilities within the locality that might support at-risk groups will help to ensure there is no over-representation of vulnerable groups frequenting the outlet (11.2.10, CIR);
- that there are no known drug and alcohol treatment centres adjacent to the proposed outlet or within the locality (11.2.9, CIR);
- that there is a Dry Area of modest size known as Woodcroft Farm Reserve located 650 metres from the proposed outlet where the consumption and possession of liquor is prohibited between 8pm to 6am every day (11.2.11 -11.2.12, CIR);

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

The Applicant wrote to 49 potential stakeholders and interest groups in relation to the application and notes that no concerns were raised by any of these interest groups or stakeholders in relation to the application (14.18, 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; or whether the appropriate approvals, consents and the like, pertaining to the proposed premises have been granted (19.1, A1), and cites the following cases in support: *BWS Seaford* [2015] SALC 19 at [6]; *BWS Mt Barker* [2016] SALC 33 at [7], *BWS Woodcroft* [2016] SALC 35 at [11], *Woolworths Liquor BWS Arndale* [2014] SALC 14 at [11], and *Woolworths Limited* [2013] SALC 23 at [7].

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

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

Additionally, the Applicant notes that it has not been involved in legal proceedings in South Australia involving the sale of liquor to minors (14.23, 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 (11.2.13, CIR);
- the Applicant has extensive policies and procedures in the responsible service of alcohol, detailed staff induction and extensive training on their roles and responsibilities including the House policy; ID 25 Policy; Secondary Supply Policy;

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- Responsible Buying Charter; Intoxication Policy; School Uniform Policy; and Best Practice Policies and Interventions (Attachment K, CIR);
- the BWS Store will be 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, A1 and 11.2.15, CIR);
 - 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 (11.2.16, 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 CBS Licensing Inspectors (11.2.16, 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 (11.2.16, CIR);
 - Woolworths conducts regular internal security and safety audits to ensure all stores adhere to the business' policies and procedures. If there are concerns, remedial action is taken immediately (11.2.16, 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 (18, A1);
 - incident registers are maintained in each BWS store so that any incidents are recorded and dealt with efficiently and appropriately (19, 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 (14.24, A1).

The locality has a lower crime rate across every recordable offence type compared to the State average (11.3.2, CIR).

The locality's low rate of crime is reinforced in relation to the total rate of crime, as the rate recorded for the locality is almost one fifth lower than the State average (11.3.3, CIR).

The most common offence with the locality is 'other theft' which includes the theft of household goods, bicycles, electricity, gas or water, and petrol drive-offs, and is therefore not entirely relevant to the proposed PLSL outlet. The fourth-most prevalent offence recorded for the locality is 'theft from shop' which is clearly more relevant, however, MasterPlan submit that 'theft from shop' offences do not appear to be a prevalent problem in the locality, "*and certainly not within the immediate locality surrounding the proposed outlet*" (11.3.6, 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 the locality would lead to or be responsible for increased crime levels (11.3.7, CIR).

The Objector submits that "*there are fundamental problems and inconsistencies with the data provided in the Masterplan report which means that it is difficult if not impossible to properly consider it*", but notes the low SEIFA scores for the locality which it contends as "*suggesting a population more vulnerable to alcohol-related harm*" (47, Ob.1), and state that "*Masterplan*

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can provide little assistance as to the matters concerning the potential for liquor-related harm. It is beyond their field of expertise” (80, Ob.1).

In reply, the Applicant submits that *“there is no evidence that the grant of this application will result in a worrying level of increased harm due to excessive or inappropriate consumption of liquor, either to the relevant community as a whole, or to any group within that community”* (2.10.3, A2), and notes that Mr Burns of MasterPlan has 30 years of experience in appearing before the Licensing Court as an expert planning witness (2.22, A2).

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.

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 training and management, 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 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 (Attachment K, CIR).

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

Submission of Associate Professor Michael Livingston

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

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

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

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

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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.
- 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.”

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

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

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

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

In conclusion, Professor Livingston submits that:

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

.....

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

Submission of the Royal Australasian College of Surgeons

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

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,

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sleep disorders, male impotency and eye disease. Excessive alcohol consumption also raises the overall risk of cancer, including cancer of the mouth, throat and oesophagus, liver cancer, breast cancer and bowel cancer.”

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

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

.....

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

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

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

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

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

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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.

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*

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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, 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 25 February 2022 (A4). The Applicant maintains the position it has adopted in a number of other PLSL applications, submitting that I should not place any weight on the Harm Submissions, but having noted that I have placed some weight on the Harm Submissions in another decision, submits that “such weight ought to be limited and only at a general level, consistent with the approach adopted in *Liquorland Mount Barker*” (pg1, A4).

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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:

- the Harm Submissions do not deal with specific local issues relevant to the applications (1.1, A4), and are not “locality specific” (2, A4);
- 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, A4);
- 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 supply and sale of liquor within the relevant locality (2.3, 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 (4-5, 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 (5.1, A4); lack of “challenging circumstances” in the locality (5.2, 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, A4);
- the locality has a lower crime rate across almost every recordable offence type compared to the State average (11.3.2-11.3.3, CIR and 5.4, A4);
- whilst the locality has a ‘lower or equal’ socio-economic status compared to the broader metropolitan area, the data also shows that households in the locality have moderate-high incomes and that the locality is generally in an improved economic position compared to Greater Adelaide (11.3.9, CIR and 5.5, A4);
- the rate of unemployment within the locality is not considered to represent a social risk factor (11.3.13, CIR and 5.6, A4);
- the proposed offering is not a larger store, but rather a modest store in a standalone tenancy adjacent to a popular Woolworths supermarket, operated by an experienced liquor retailer with extensive policies and procedures (5.7, A4);
- the schools and childcare centres within the locality are evenly disbursed, with no evident concentration near the proposed site and Masterplan do not consider there to be any risk of minors being exposed to licensed products (11.2.3, CIR and 5.8, A4);
- there are no cultural risks with the application or harm to places of worship (5.9, A4);
- there are no aged care facilities in close proximity which may give rise to risks to the residents of those facilities (5.10, A4);
- there are no known drug and alcohol treatment centres adjacent to the proposed offering or within the locality (5.11, A4);
- none of the 49 interest groups and stakeholders who were notified of the application responded or raised concerns in relation to the application (5.12, A4); and
- SAPOL and the local council of Onkaparinga did not object to the application (5.13, A4).

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*.

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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, A4), 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 by the Applicant's CEO and managing director Mr Stephen Donohue in support of this (5.17, A4).

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, wither by the relevant community as a whole, or to any group within the community; there are a greater number of vulnerable persons in the community of the proposed licence as opposed to the general population or that the locality is 'awash' with take away liquor facilities (6.1-6.3, A4).

The Applicant describes the suburbs under consideration in the locality as typical metropolitan suburbs and submits that the grant of the application would not result in a change to existing consumer behaviour as to the type or quantity of alcohol consumed, will not introduce new drinkers to the market, and that the risk of harm posed is therefore very low (6.3-6.6, A4).

The Applicant makes a number of comments about Dr Livingston's submission and the research he has relied upon (7 – 7.8, 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 (7.9, A4). 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 RAC's submission is one of general opposition to any new licence*" (7.10, A4).

The Applicant 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, A4).

Cultural, recreational, employment or tourism impacts

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

MasterPlan do not comment specifically on the impact that the grant of this application may have on any other PLSL stores in the locality but concede that some competing stores may choose to reduce the number of hours that employees are engaged as a result of a loss of

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sales in those competing stores, but contends that there will be an overall net benefit of total employment hours available to job seekers (11.4.3, CIR).

The Objector submits that:

It is misleading and overly simplistic to suggest that this application would result in additional employment for 1-2 fulltime staff, and 3 part-time and casuals.

Presumably some other tenant would take up the space, if not BWS, who would employ a comparable or potentially greater number of staff.

Masterplan also acknowledges a potential loss of staff hours at other liquor outlets resulting from this proposal, at 11.4.3.

It is not reasonable to assume that any net additional employment will stem from this application being granted.

(66-70, Ob.1).

MasterPlan submit that *“a significant benefit will be the provision of ready access to a purpose-built BWS store featuring the latest in design and layout..... to ensure that the customer shopping experience is as pleasant and convenient as possible”* (11.4.4, CIR), and that *“the co-location of the new store within the centre and close to the 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”* (11.4.5, CIR).

Social impact and impact on the amenity of the locality

MasterPlan state that the locality has a lower crime rate every recordable offence type compared to the State average, and note that the crime rate for the locality is *“almost one fifth lower than the State average”* (11.3.2-11.3.3, CIR).

MasterPlan observe that ‘theft from shop’ is the fourth most common offence recorded in the locality, but are of the view that theft from shop offences do not appear to be a prevalent offence or particular problem in the locality, and certainly not within the immediate locality surrounding the proposed outlet (11.3.6, CIR).

MasterPlan submit that there is no evidence identifying what proportion of crime is related to the consumption of alcohol, and that *“there is no evidence to suggest that an additional packaged liquor sales outlet in this locality would lead to or be responsible for increased crime levels”* (11.3.7, 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”* (11.3.19, CIR).

MasterPlan provide some analysis of the unemployment rate in the locality and note that unemployment ranges between 4 percent at Woodcroft and 11 percent at Morphett Vale, which is higher than the Greater Adelaide average of 6.5 percent, but submit that *“the rate of unemployment in the locality is not considered to represent a social risk factor for the proposed Packaged Liquor Sales Licence outlet”* (11.3.16, 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 almost 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 (11.3.9 and Table 5, CIR).

The highest scoring SEIFA index for the locality is the 'Index of Economic Resources' at 5.60 (out of a possible 10). MasterPlan submit that this score indicates that households in the locality have moderate to high incomes and that the locality is in an improved economic position compared to the average of its metropolitan region (11.3.10, CIR).

The lowest scoring SEIFA index for the locality is the 'Index of education and Occupation' at 3.93. MasterPlan submit that this indicates that this low score indicates that the educational attainment of the locality is below average when compared to national standards and also suggests a higher-than-average unemployment rate, but notes more recent data from the Australian Bureau of Statistics (**ABS**) which it says suggests an "improving employment situation" (11.3.11, CIR).

The 'Index of Economic Resources' at 5.60 and 'Index of relative Socio-Economic Disadvantage' at 5.49 (out of a possible 10) for the locality both score higher than the national average (of 5.00) and Masterplan are of the view that this indicates that the locality has a larger proportion of home ownership, as well as higher household incomes (11.3.13, CIR).

MasterPlan note that in a similar liquor licensing regulatory environment in NSW, the NSW Independent Liquor and Gaming Authority indicated that high outlet density may increase regulatory concern as to the overall impact of granting another licence if the proposed new business is likely to contribute to relatively challenging circumstances in each locality or the broader community, and cites the Decision at *BWS Petersham A14/ 267*, page 238.

MasterPlan are of the opinion that the social profile of the locality and the absence of at-risk factors do not represent existing "challenging circumstances" in the locality, and also note "*the very low outlet density of Packaged Liquor Sales Licence outlets in the Woodcroft area as shown in Table 3*" (11.3.18, and Table 3 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 otherwise been made at existing outlets throughout the locality, and beyond the locality. As such, the proposal is not considered to have a negative impact for at-risk consumers within the community, but rather will offer the convenience to purchase a selection of beers, wines and spirits as part of the daily or weekly shop*" (11.3.17, 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*" (11.4.5, 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 and will provide increased choice and increased competition in the locality (7, A1).

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It is clear from the CIR that a significant number of customers shop at the Supermarket, with approximately 21,489 customer transactions per week, which is over 1,000,000 transactions per annum (12.3, A4). It is not known how many of these are repeat customers, but in any case, the proposed offering will likely appeal to many customers who frequent the Shopping Centre who wish to purchase packaged liquor at the same time. Many people in the local community can be expected to take advantage of the proposed premises, and many will find this very convenient.

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 offering and community consultation

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey of existing Woolworths customers. Responses were received from 445 people who answered the first 3 survey questions and 380 people who answered the fourth question. Of these 85.4 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?*” (12.2-12.3, CIR).

MasterPlan acknowledge that the survey has inherent limitations given its relatively small sample size, but submit that the response from existing Woolworths’ customers to a PLSL outlet adjacent to the Woolworths supermarket was “resoundingly endorsed”, and that the survey results “*suggest 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 49 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 Community Impact Report no responses had been received (12.1, CIR).

Submissions by the Objector opposing the application (Ob.1 and Ob.2) and the Applicant’s submissions in reply (A2 and A3)

A submission opposing the grant of the application was received from lawyers acting on behalf of Carleton Investments Pty Ltd (the owner of a thirsty Camel drive through bottle shop in the locality), together with the submissions in reply received from the Applicant.

The Objector has made various submissions opposing the grant of the application, which I summarise as follows:

- the only real public “benefit” identified in the Masterplan report is to add yet another option for “convenience” shopping in the area, that people living nearby can walk to, which is not enough to establish community or public interest or benefit;
- one stop shopping is already available in the locality;
- it is not realistic or consistent with community expectations for there to be a packaged liquor outlet within close walking distance to all people living in a locality;
- there is no evidence of any community expectation of a bottle shop being located in a shopping centre of this size in this location;

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- the survey data has inherent limitations and is not sufficient to establish whether the community supports the proposed business;
- on the approach taken by Masterplan, it would be difficult to imagine a supermarket where a licence would not be justified on a one-stop-shop argument, which is inconsistent with community expectations and would lead to a flood of such licences and proliferation;
- there is no suggestion that the existing outlets do not provide an adequate range and variety of liquor, consistent with contemporary expectations and the “expectations and aspiration of the public”;
- that whilst it is difficult to draw conclusions from the data, the SEIFA indexes referred to by Masterplan suggest a population in the locality that is more vulnerable to alcohol-related harm;
- there is a Dry Area in Woodcroft and the Applicant has done little to address this or the issues giving rise to it in its submission;
- that this matter can be distinguished from *Liquorland Park Holme* on the basis that no point of difference or potential benefit has been established, in proposing another ‘typical’ BWS store given there are already 2 BWS outlets serving the locality, along with various other take away liquor outlets;
- Masterplan’s licence density calculations leave out several PLSL outlets that were considered to form part of the locality by the Court in *BWS Woodcroft 2016* and which the Objector says ought to have been included by Masterplan in the locality;
- there are no tourism benefits and it is not reasonable to assume any net additional employment will stem from the application being granted;
- yet another BWS outlet in the locality is likely to distort the packaged liquor market and is inconsistent with the Objects of the Act, and is likely to be “contrary to the balance of the industry”;
- the community is likely to be worse off if the application is granted;
- despite the Applicant’s policies, it cannot control the potential harmful impacts of liquor once it is taken from its premises;
- the Applicant has not discharged the onus of satisfying the Authority that the application is in the community interest;
- the Objector (Ob.2) also relies on Gilchrist J’s decision in *Hove* in relation to matters of public interest and proliferation and notes His Honour’s observation at [135] – [136] that:

In the past, this Court has said that it is not in the public interest for there to be a proliferation of bottleshops selling essentially the same range of liquor within short compass of each other.

I think this remains so, notwithstanding the changes of the Act.

The Applicant filed comprehensive submissions in reply and submits that a number of cases referred to by the Objector refer to the Licensing Court’s findings under the old legislation and the ‘needs test’ (1.6, A2).

The Applicant argues that the Objector is essentially raising a ‘needs’ test type argument that is no longer relevant in the context of the current statutory regime and “community interest” test, and that it would be erroneous to equate “community interest” with “community expectation” (2.8, A2).

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The Applicant submits that the survey data provides a reasonable indication of community support for the proposal (2.4, A2).

The Applicant submits that the Objector is relying on the Licensing Court's earlier findings (made under the old legislation) in relation to the application at the same Site, and in particular notes that the Objector is relying on the Court's findings as to "community expectations" (as that concept came to be understood under the previous legislative regime, where it was necessary to demonstrate the inadequacy of licensed facilities) as a proxy for the "community interest" (2.8, A2). The Applicant submits that the meaning of "community interest" must be determined by reference to the current legislative provisions, construed in context (2.8, A2).

The Applicant rejects the notion that Masterplan rely solely on "one-stop-shopping" to justify the grant of the application or that the approach would lead to an undesirable proliferation of outlets (2.10, A2).

The Applicant submits that that whilst "convenience" (i.e. one-stop-shopping) is an important benefit, it is not the only public benefit identified in relation to the proposed packaged liquor outlet, noting that the following matters are also relevant to establishing community benefit (2.5.1 – 2.5.7, A2):

- there will be new employment opportunities in relation to the proposed BWS Store for residents in the locality;
- there will be new employment opportunities in relation to the construction and fit out of the proposed premises;
- it will have positive trade implications for other traders in the Woodcroft Plaza Shopping Centre;
- it will stock local products and the CEO of the store will be encouraged to listen to customers and provide a tailored product range in response;
- it will be a modern, safe, well managed and well stocked liquor store which will have a positive impact on the amenity of the area;
- it will enable customers who are members of the Woolworths and BWS rewards program to benefit from exclusive, targeted offers in line with their preferred products based on their buying patterns; and
- 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.

The Applicant contends that Masterplan have undertaken a detailed assessment of the relevant community to establish community interest as well as weighing up the positive aspects of the Application against the perceived negative aspects, and notes that his approach is consistent with the Court's approach in *Liquorland Park Holme*. The Applicant submits that "*there are ample actual positives and little (if any) perceived negatives associated with the Application*" and provides some analysis in respect of the "perceived negatives" (2.10.3, A2), and concludes that:

It follows from the above that upon an evaluation of the positives and negatives associated with this Application, the Commissioner should be satisfied that it is in the community interest to grant this Application.

The Applicant also takes issue with the Objector's presumption that in the event the PLSL outlet is not approved "some other tenant" will occupy the premises, noting that the premises is currently vacant and has been vacant for some time (2.19, A2).

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Additionally, the Applicant submits (2.27, A2) that:

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

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

The Applicant filed further submissions (A3) in response to the Objector's Further Submissions in relation to Hove (Ob.2), which I summarise as follows:

- the application should not be refused on the basis of the Court's Decision in *Hove*, and the present application can be distinguished from *Hove* for a variety of reasons (discussed in detail at 2.1 – 2.10, A3);
- the Applicant contends that the proliferation of licences is not an issue in the locality and refers to the density calculations that show that the combined density of General and Hotel and packaged liquor sales licences for the locality is more than two times lower than the State average;
- the Applicant maintains that any discretion that the Authority has in respect of the application must be exercised for a purpose consistent with the legislation, and the discretion should not be used to provide protection to existing licensees;
- the discretion should not be used to inadvertently bring back the "needs" test; and
- in previous attempts to establish a bottle shop at this site "the Court has indicated that it would not have exercised its very wide discretion to refuse the application as there were a sufficient range of takeaway liquor facilities in and about the locality" (*BWS Woodcroft 2016* per Gilchrist J at [182]).

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. That said, I would have made the same decision if the additional packaged liquor outlets identified by the Objector were included as part of 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 many of the 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 an increase in convenience for those in the locality who wish to purchase packaged

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liquor products 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 very convenient, although convenience alone is not determinative of the application and is only one factor to be considered.

The number of people who will benefit from the convenience of the proposed offering is significant and is analogous to the situation in *Liquorland Park Holme* matter, as opposed to *Hove* where the supermarket under consideration was considerably smaller and less busy.

The Licensing Court has previously held that there was no community expectation that the Woodcroft Market Plaza shopping centre would contain a bottle shop, as observed by Gilchrist J in *BWS Woodcroft 2016* (see [153], [155], [162], [173]), where he held:

Although it would plainly be very convenient for many of the shoppers using the Woodcroft Market Plaza to have the option of buying takeaway liquor from that centre, by reference to contemporary standards, it continues to be within reasonable to expect them to take a five minute drive to purchase takeaway liquor elsewhere. The level of inconvenience associated with that journey is minimal. It is not a difficult trip.

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

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.

The Applicant, through its lawyers, wrote to various (49) stakeholders and interest groups advising them of the intention to lodge a PLSL application and inviting comment on the proposed application. No responses were received in reply.

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey of Woolworths' customers in which over 85 percent of the people surveyed would support an application to establish a BWS store at the Site, and over 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.

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

I have considered the submissions filed by the Objector 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.

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

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

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

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

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

It is clear from the expert evidence put forward by the Applicant that the liquor licence density for the locality is lower than the State average and that the locality is clearly not ‘awash’ with take away liquor facilities.

The locality records lower SEIFA indexes across almost all measurable criteria compared to Greater Adelaide.

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.¹ I also consider that 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

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

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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.²

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.

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 when 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 locality.

For those reasons, I consider that 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.

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

The Objector has made submissions, referring to Gilchrist J’s decision in *Hove*, that it is not in the public interest for there to be a proliferation of bottle shops selling essentially the same range of liquor within short compass of each other, that the Applicant already has existing outlets in the locality, and that the grant of this application would further entrench the Applicant’s dominant position in the marketplace, and that the application should be refused “*on public interest discretionary grounds, as well as for general community interest reasons*” (Ob.2).

² ANROWS Submission at pp. 2-3.

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I accept 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, however 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 Sips 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.

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

I have considered the Applicant’s submissions in reply addressing *Hove* (A3), and agree with the Applicant that in many ways the factual circumstances considered by the Court in *Hove* are readily distinguishable from the present application in respect of such 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.

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 Objector’s submissions in light of Gilchrist J’s decisions in *Liquorland Park Holme* and *Hove*.

In my view, the potential harm caused by the increased co-location of liquor stores and supermarkets is inconsistent with the Objects of the Act and the intention of Parliament.

Having considered the Objects of the Act, I am of the view that granting this application would not be consistent with ensuring 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 would not be consistent with the responsible development of the

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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 the application will confer little more benefit to the community than providing even more convenience in a locality where consumers already have one-stop-shop options in and about the locality within a 5 minute drive of the proposed offering.

Accordingly, BWS' application for a PLSL at Woodcroft is refused.

Dini Soulio
Liquor and Gambling Commissioner
4 March 2022