

East End Cellars Norwood - General and Hotel Licence Application Decision

Rav Fine Wines Pty Ltd (**the Applicant**) has applied for a General and Hotel licence (**G&H**) pursuant to section 32 of the *Liquor Licensing Act 1997* (**the Act**), in respect of proposed premises to be situated at Tenancy 1, 88 Magill Road, Norwood SA 5067 to be known as East End Cellars Norwood.

The Applicant has submitted a Community Impact Report (**CIR**) prepared by MasterPlan, with 14 supporting attachments.

It is the content of the **CIR** and supporting attachments, submissions made to the Licensing Authority (**the Authority**), along with submissions lodged on behalf of P & J Hurley Pty Ltd, Roo Pty Ltd, Murwood Pty Ltd, Shogun Pubs Pty Ltd, Peds 14 Pty Ltd, Rory Sloane Holdings Pty Ltd and Dangerfield Enterprises Pty Ltd trading as the **Alma Tavern (the Objector)** opposing the grant, and submissions 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.

- Applicant's Community Impact Report (**CIR**)
- Planning Consent Plans (**Attachment A**)
- Tenancy Floor Plans (**Attachment B**)
- Portal Summary (**Attachment C**)
- Norwood Green Floor Plan (**Attachment D**)
- Corporate Background (**Attachment E**)
- Menu (**Attachment F**)
- Locality Plan (**Attachment G**)
- Area and Location Report (**Attachment H**)
- Schools, Pre-school and Childcare Plan (**Attachment I**)
- Locality Community Features Plan (**Attachment J**)
- Community Consultation (**Attachment K**)
- Pedestrian Access Plan (**Attachment L**)
- Dry Areas (**Attachment M**)
- Liquor Licences (**Attachment N**)
- P & J Hurley Pty Ltd, Roo Pty Ltd, Murwood Pty Ltd, Shogun Pubs Pty Ltd, Peds 14 Pty Ltd, Rory Sloane Holdings Pty Ltd and Dangerfield Enterprises Pty Ltd trading as the **Alma Tavern** submission dated 10 August 2022, objecting to the application (**Objection**)
- Attachment to Objector's submission – Crime Statistics (**Annexure A**)
- Attachment to Objector's submission – Wine Lists (**Annexure B**)
- Applicant's submissions in reply to submission (**A2**)

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

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

I must also apply the Community Impact Assessment Guidelines (**the Guidelines**), which state: *“The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest and to provide relevant evidence and submissions to discharge this onus.”*

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

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

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

Section 3(1) of the Act provides that:

- (1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—
 - (a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and
 - (b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and
 - (c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and
 - (d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.
- (1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—
 - (a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and

- (b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and
- (c) the adverse effects on a person's health; and
- (d) alcohol abuse or misuse; and
- (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 section 57 of the Act have been met, in relation to such matters such as: the suitability of the premises; the potential for them to cause undue offence, annoyance, disturbance or inconvenience to nearby residents, workers and worshippers in the vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools in the vicinity of the premises; and whether the appropriate approvals, consents and exemptions, in respect of the proposed premises have been obtained.

Additionally, 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)*", and 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. 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.

Nature of the proposed business offering

The Applicant is proposing to open a wine bar and shop at Tenancy 1, 88 Magill Road, Norwood SA 5067.

The proposed premises is to be located on the ground floor of a mix used development known as Norwood Green, which will have commercial buildings on the ground floor and a 7 storey residential apartment building above.

MasterPlan describe the proposal as follows:

East End Cellar Norwood is a multifaceted concept which encapsulates a fine wine retail shop, wine bar and restaurant. The venue will provide indoor and outdoor seating for dining and consumption of wine on the premises.

I am instructed that the fine wine retail shop will focus heavily on small boutique wine producers from South Australia, Australia and across the world. The operators foresee the balance to be 50 percent Australia and 50 percent international. No cask wines will be available for purchase, nor will wines below an approximate retail price of \$20.00 per bottle be offered for sale. The aim is not to compete with the larger liquor and wine retail stores, which aim at offering entry level and mid-tier wines at competitive prices. Rather, the wine bar and shop will focus on a higher quality offering.

I am instructed that the wine bar and shop will have an extensive list of wines and other alcoholic beverages by the glass at prices ranging from approximately \$8.00 per 150ML to \$40.00+ per 150ML pour for a range of high-ranking premium wines which will be poured using a Coravin system.

I am instructed that the restaurant which will be fully integrated within the same space, producing a range of small and mid-sized dishes which can be eaten individually or shared amongst larger groups. The mantra of the menu will be simple but delicious food, with the intention to focus on South Australian produce. The drinks and food menu are at Attachment F, demonstrating the up market and sophisticated offering.

A large wooden table capable of seating 14 people will be the main point of focus when entering the venue. This table will be used as a shared dining location unless being used for various themed wine tastings, producer narrated masterclasses and educational short courses which will be held on site (3.2.1 - 3.2.5, CIR).

The Applicant submits that the proposed premises will operate in line with the existing operations at East End Cellars (Adelaide), and has provided the drinks and food menu which they submit demonstrates that the proposed offering will be upmarket and sophisticated.

MasterPlan describe the current operation of East End Cellars (CBD) as a 'fine wine merchant' providing a high-quality wine, dining and tasting experience. East End Cellars is owned and operated by East End Cellars Pty Ltd, and the Applicant is a subsidiary of East End Cellars, who markets the establishment as:

Here at East End Cellars we take our wines seriously. Very seriously. Our excellent reputation has been built over the years through knowing what wine to stock and finding the wines our customers are looking for. Our passion is for the wines of small wine producers. Those whose aim is to produce great wines of individual character and whose focus is solely on quality over quantity (3.1.2, CIR).

East End Cellars has been in operation since 1997. East End Cellars and its Director Michael Andrewartha have received a number of industry awards which are noted by MasterPlan (3.1.3, CIR).

The Applicant has applied for the following trading hours for the proposed outlet:

- Wine Bar: Monday to Sunday 11.00 am to 1.00 am (These are maximum trading hours. Typically, the wine bar will close at 11.00 pm).
- Wine Shop: Monday to Sunday 9.00 am to 10.00 pm.

In terms of terms of key features and potential customers, MasterPlan observes that:

The proposed target market is an important consideration for the proposal, as was the case in the Decision Notification for the Seed Deli Bistro Rooftop Clare Valley 5453 (Application no 205533).

In Granting the general and hotel liquor licence, the Hearing's Delegate noted that:

'The applicant has identified that there were 3 "traditional" general and hotel liquor licences in Clare, offering a range of bar, dining, bottle shop and gaming machine facilities. As well as the Clare Valley Wine, Food and Tourism Centre which also operates under a general and hotel liquor licence.'

'The target market for the proposed business, in particular the rooftop bar is very different to the clientele currently attracted to the "traditional" hotels.'

'The applicant will bring a new type of food, dining and drinking experience to the Clare Valley with an upmarket bistro, gourmet providore, wine room/cellar and roof top bar. All

of which is distinct from other licensed premises in the region and likely to appeal to both locals and tourists alike.' (9.3.19, CIR).

The target market attributes of this proposal align with those considered in Application no 205533. While there are a number of 'traditional' general and hotel liquor licences in the locality, these offer a very different product to the proposed wine bar and shop. The wine bar and shop will provide an opportunity to show case premium food and wine, in line with the existing operations at the East End Cellars. The wine bar and shop is 'distinct from other' general and hotel liquor licences in the locality, appealing to 'both locals and tourists alike' (9.3.20, CIR).

In relation to community consultation and support for the application, MasterPlan refer to a survey that was carried out, whereby 231 customers on the East End Cellars database were surveyed:

Existing East End Cellars customers have also been surveyed with questions relevant to the proposed wine bar and shop. The questions were incorporated within a larger survey that intended to gain feedback on the existing East End Cellars operations. The survey was distributed electronically to the East End Cellars customer database via a newsletter. The survey was completed by 231 people, with five (5) of the 231 respondents confirming they would not attend the new Norwood location. We also note that respondents indicated they were most interested in the new establishments wine shop (70 percent), wine bar (74 percent) and dining (57 percent) (10.2, CIR).

10.3 The survey suggests that the greatest attraction of the wine bar and shop is the opportunity to taste and purchase premium wines, with dining also representing an important element (10.3, CIR).

MasterPlan acknowledge that the survey has inherit limitations due to the relatively small sample size and design, but contend that existing customers have resoundingly endorsed the proposed offering.

Potential Harm

Harm minimisation is a key component of the community interest test, consistent with 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 Applicant wrote to key stakeholders and interest groups relevant to the locality notifying their intention to lodge an application for a General and Hotel Liquor Licence. Those letters invited responses to be provided within 14 days. A list of recipients and an example letter have been provided (Attachment K, CIR).

MasterPlan notes that at the time of drafting the CIR:

.....one (1) response was received from Drug and Alcohol Services South Australia (on behalf of SA Health). The letter and response letter from East End Cellars are at Attachment K. Drug and Alcohol Services South Australia referenced the need for an existing treatment facility to be considered within the Community Impact Assessment, which has been undertaken within the body of this report (10.1, CIR).

MasterPlan make a number of observations in relation to the treatment facility, including its location, vehicular access to the facility, car parking available for those seeking treatment at the facility, and were of the view based on a site visit that:

Visitor car parking is conveniently provided at the centre. At the time of undertaking a site inspection (13:30, Friday 25 March 2022), only one (1) of the nine (9) visitor car parking was being utilised. The facility appears to be amply provided with car parking spaces for visitors, with the spaces being conveniently located at the vehicle entrance point (9.2.14, CIR).

MasterPlan have also considered the walking distance between the proposed offering and the treatment facility and consider that 2 prominent hotels, the Alma and the Republic, would provide a more convenient option for facility clients to purchase alcohol from:

The two (2) hotels are prominent establishments when viewed from Magill Road in comparison to the proposed wine bar and shop, which is a small Tenancy setback approximately 35 metres from the road boundary. We also note that the wine bar and shop proposes to supply premium wines, as opposed to the broader and more cost-effective range available at each of the hotels.

The two (2) hotels provide a more convenient option for facility clients to purchase alcohol than the proposed wine bar and shop. The hotels also provide a broader range of products at a much lower price point. Given the ample car parking provided on the facility site, the anticipated pedestrian movements between the two (2) premises, the location and prominence of the existing hotels and the product supplied by each of the establishments, the proposed wine bar and shop are not considered to provide a risk to clients of the facility.

We also note that there are two (2) alcoholics anonymous meeting locations within the locality, referenced as support services on the Locality Community Features Plan (Attachment J). The meeting locations are 1.8 kilometres to the south-east and 1.9 kilometres to the south of the Tenancy. Given the large separation distance, the wine bar and shop is not anticipated to provide an additional risk for meeting attendants.

Community group meeting locations are also depicted on the Locality Community Features Plan (Attachment J), who were directly contacted by the applicant advising of the intentions to lodge a Liquor Licence Application. A cluster of community groups are located towards the north of the Tenancy, with a separation distance ranging from between 200 metres and 600 metres. Vehicle access to the groups is provided via Nelson Street and Payneham Road. There is no direct vehicle or pedestrian link provided to the Tenancy. **Given these characteristics, the wine bar and shop is not considered to pose an additional risk to community group members.** (My Emphasis) (9.2.1.9 – 9.2.22, CIR).

In respect of the Applicant's harm minimisation approach, it is submitted that:

Staff induction and training will be consistent with that undertaken at the existing East End Cellars, with comprehensive training in the Responsible Service of Alcohol ('RSA') provided. This includes:

- Identification request – staff are to ask for identification if a person looks to be 25 years of age or younger.
- Secondary Supply – staff are to refuse service when they have reasonable suspicion that a person is purchasing alcohol to supply it to a minor.
- Intoxication – requires staff to refuse service to intoxicated persons.
- School Uniform – requires any person in a school uniform to be refused service even if they have valid identification (9.2.24, CIR).

MasterPlan are of the view that the location of the tenancy on the southwestern corner of the building and the integration of the indoor and outdoor areas "*enables effective Crime Prevention through Environmental Design (CPTED) principles to be employed to aid harm minimisation*" (9.2.25, CIR).

MasterPlan also state that consideration has been given to the design and layout of the store to assist with surveillance and deter crime:

- Consideration has been given to the design and internal layout of the store to foster natural surveillance. This is achieved with the centrally located wine displays in the Tenancy being of a low level to enable views above. The generous use of glazing also enables views indoors and out. Maximising surveillance in this manner increases the sense of safety and helps deter criminal activity.
- The store will be fitted with a CCTV and alarm system, with electronic footage saved (9.2.26, CIR).

I note that neither South Australia Police (**SAPOL**) nor The City of Norwood, Payneham and St Peters have objected to the application.

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 in the Adelaide Metropolitan area is the area within a 2 kilometre radius of the site of the relevant premises.

The Applicant has defined the locality as:

A 2.0-kilometre radius surrounding the Tenancy. The locality incorporates inner city suburbs on the eastern side of the Adelaide CBD. The locality is largely contained within the City of Norwood Payneham and St Peters (8.7 square kilometres), in addition to the City of Burnside to the east and south (1.59 square kilometres), Adelaide City Council to the west (2.08 square kilometres) and a small area in the Town of Walkerville to the north-west (0.18 square kilometres). Notably, the Adelaide Park lands forms the majority of the Adelaide City Council area (8.1, CIR).

The Applicant has provided details of the infrastructure and character of the locality as:

The main dual lane arterial roads include Magill Road, The Parade and Kensington Road. Each road also supports a strong retail and commercial streetscape presentation. The Parade in particular is provided with a shopping village and pedestrian friendly cosmopolitan character with plentiful hotels, bars, restaurants and cafes providing a convivial amenity, in addition to a high number of retail and personal service land uses (8.3, CIR).

The locality incorporates an area with strong commercial characteristics towards the south-west, with land uses such as offices, service trade premises and bulky goods outlets being dominant (8.4, CIR).

The remainder of the locality has a strong residential character. Dwellings are generally detached or semi-detached on medium density sized allotments. Heritage listed dwellings represent a strong characteristic, providing a streetscape presentation of high cultural

value. The amenity levels are generally very high given the well-maintained landscaped allotments, dwellings of high architectural standing and mature street trees. (8.5, CIR)

MasterPlan has utilised SA1 collector districts to calculate a population of 32,683 persons in the locality (8.6, CIR).

Cultural, recreational, employment or tourism impacts

MasterPlan submits that the proposed premises will create employment benefits and has detailed these as:

The wine bar and shop will employ approximately four (4) to six (6) full time and 15 to 20 casual employees. The creation of employment opportunities is a direct benefit which will be realised by the approval of this application. The proposal will also have a strong focus on locally sourced food and wine, supporting employment opportunities for suppliers, particularly in the surrounding wine regions (9.4.1, CIR).

Wine bar and shop employees will also be provided with further education and upskilling opportunities to complete the WSET (Wine and Spirit Education Trust) accreditation, with the business financing the WSET Level 3 and 4 studies for selected senior staff. The business's support of staff education provides further employment benefits and expands the food and wine knowledge base (9.4.2, CIR).

From a tourism perspective, it is submitted that:

The proposed wine bar and shop will add to the 'cosmopolitan atmosphere', ensuring the City retains its marketing position as one of Adelaide's most desirable places to visit. The wine bar and shop sits comfortably within the City's tourism marketing strategy (9.4.4, CIR).

MasterPlan note that Toni Paterson from Gourmet Wine Traveller has described East End Cellars as an "*Adelaide institution, (with) its astute wine selection capturing the interest of palates worldwide*" (3.1.3, CIR), and have supplied a copy of this article along with a number of other articles reporting on East End Cellar's contribution to the local food and wine industry.

Social impact and impact on the amenity of the locality

In relation to the construction of the proposed premises MasterPlan submits:

The shop fit out, design and presentation will have a consistent theme to the current East End Cellars operation, incorporating high quality fixtures and fittings that support a fine wine and dining experience (4.3, CIR).

In relation to its consideration of the locality's social profile, MasterPlan observes:

An indicator of the locality's social profile is provided in the Socio-Economic Indexes for Areas (the SEIFA index), compiled by the Australian Bureau of Statistics. The Consumer and Business Affairs portal provides SEIFA figures; however, these utilise large SA2 collector districts. To provide a more accurate depiction of the social profile we have utilised the SA1 districts which are wholly or partly within the locality in our analysis and compared them to Greater Adelaide. The data utilised was obtained from the 2016 Census (9.3.1, CIR).

MasterPlan's analysis indicates that the locality records higher SEIFA indexes across all measurable criteria compared to Greater Adelaide, with the exception of the 'Index of Economic Resources', and they contend that the collective SEIFA index results are evidence

of the locality being one of high socio-economic advantage as regards financial, social and educational measures (9.3.5, CIR).

Additionally, MasterPlan note that the locality enjoys a very low unemployment rate, indicating the high-socio economic advantage that is provided through employment, and submits that these results align with the very high SEIFA 'Index of education and occupation' rating for the locality (9.3.9, CIR).

In relation to existing licensed premises in the locality MasterPlan note that the locality incorporates 20 General and Hotel Liquor Licences, 4 Packaged Liquor Sales Licence outlets, and that there is 1 Liquor Production and Sales Licence located in close proximity to the proposed offering (9.3.10, CIR).

The General and Hotel Liquor Licences that are closest to the proposed offering include:

- the Alma Hotel, approximately 90 metres in a direct line to the west;
- the Republic Norwood, approximately 240 metres in a direct line to the east; and
- the Maid Hotel, approximately 470 metres in a direct line to the west.

MasterPlan observe that all 3 hotels are large two-storey establishments that provide a restaurant, gaming and front bar focused experience for customers. The Maid also provides a large outdoor dining area. None of these hotels have a drive-through bottle shop; however, take away liquor purchase is available.

The remaining General and Hotel Liquor Licences in the locality are generally to the south and south-east of the Tenancy (with the closest being 630 metres in a direct line), with the exception of 7 being clustered approximately 1.9 kilometres to the south-west in the 'east end' of the Adelaide CBD:

The remaining General and Hotel establishments in the locality generally provide a size, scale and service similar to the three closest examples. Two storey hotels with front bar, gaming and restaurant facilities are typical, with on-site car parking generally provided (9.3.13 – 9.3.14, CIR).

The liquor production and sales licence is located 300 metres away, which MasterPlan describe as a brewery that also provides a dining and tasting experience along with tours.

There are 4 Packaged Liquor Sales Licence outlets within the locality and MasterPlan makes the following observations in relation to those outlets:

- A 'Dan Murphy's' store 550 metres in a direct line north-northwest of the Tenancy.
- A 'Parade Cellars' store 790 metres in a direct line south south-east of the Tenancy.
- A 'BWS' store 1.3 kilometres in a direct line south of the Tenancy.
- 'East End Cellars' 1.95 kilometres in a direct line south-west of the Tenancy.

The Dan Murphy's store is a stand-alone outlet that is not located within a retail shopping centre or precinct, as is the case for the BWS store. Parade Cellars is part of The Parade shopping strip, which is characterised by café's, restaurants, retail outlets and hotels. The locality in which the East End Cellars is situated is also very similar, with a high concentration of outdoor café's, restaurants, hotels, bars and retail, particularly along Rundle Street.

The locality is generally well serviced by both Packaged Liquor Sales Licence Outlets and 'traditional' general and hotel liquor licences that are large scale two storey establishments with front bar, gaming and restaurant facilities, including beer gardens in some examples. However, these represent a very different target market to the proposed wine bar and shop,

which will attract an up market and sophisticated offering with the provision of premium food and beverage.

The proposed target market is an important consideration for the proposal, as was the case in the Decision Notification for the Seed Deli Bistro Rooftop Clare Valley 5453 (Application no 205533). In granting the general and hotel liquor licence, the Hearing's Delegate noted that:

'The applicant has identified that there were 3 'traditional' general and hotel liquor licences in Clare, offering a range of bar, dining, bottle shop and gaming machine facilities. As well as the Clare Valley Wine, Food and Tourism Centre which also operates under a general and hotel liquor licence.'

'The target market for the proposed business, in particular the rooftop bar is very different to the clientele currently attracted to the 'traditional' hotels.'

'The applicant will bring a new type of food, dining and drinking experience to the Clare Valley with an upmarket bistro, gourmet providore, wine room/cellar and roof top bar. All of which is distinct from other licensed premises in the region and likely to appeal to both locals and tourists alike.'
(9.3.16 - 9.3.19, CIR).

MasterPlan contends that:

The target market attributes of this proposal align with those considered in Application no 205533. While there are a number of 'traditional' general and hotel liquor licences in the locality, these offer a very different product to the proposed wine bar and shop. The wine bar and shop will provide an opportunity to show case premium food and wine, in line with the existing operations at the East End Cellars. The wine bar and shop is 'distinct from other' general and hotel liquor licences in the locality, appealing to 'both locals and tourists alike' (9.3.20, CIR).

Submission from the Alma Tavern objecting to the grant of the application

The Alma Tavern has objected to the grant of the application, noting that the Applicant has applied for licence with the broadest range of trading rights, which includes the authorisation for the sale of liquor for consumption off premises, and submits that this authorisation carries with it the highest risk of harm as a result of excessive and inappropriate consumption of liquor.

The Alma Tavern submits that:

We note that in *Liquorland McLaren Vale [2022] SALC 53* (Liquorland Decision), Gilchrist J stated the objects relating to harm minimisation take primacy over other objects of the Act (for example, development of the liquor industry), particularly in designated applications such as this (see paragraph 133).

We further note that in *Hove Sip n Save [2021] SALC 7* (Hove Decision), Gilchrist J held that *'...there is a heavy burden on the proposed operators of take away liquor facilities to demonstrate steps they will take to ensure...that their sale and supply of liquor will not promote harmful drinking practices'*.

While the Hove Decision related to an application for a Packaged Liquor Sales Licence, our client submits the Court's comments are as relevant, if not more relevant, to an application for a General and Hotel Licence, being the category of licence which carries the broadest range of trading rights, including the sale of takeaway liquor.
(1, pg2, Objection).

The Alma Tavern goes on to submit that the Applicant has not adequately addressed the potential for harm, or adequately outline the harm minimisation measures it will adopt. In support of this the Alma Tavern asserts that the Applicant has not provided any evidence as to what regular training will be provided to employees, and has not supplied an example of the training package or a copy of its policies, despite asserting that the training provided will be consistent with that undertaken at East End Cellars.

The Alma Tavern submits that the Applicant has not provided any reasons as to why a 2 km locality has been selected, and consequently there is no evidence the Applicant has given proper consideration to the locality in which the premises will be located *“and in turn the community interest or alcohol related harm which may be caused by the operation of the proposed premises”* (2, pg3, Objection).

The Alma Tavern refers to the list of groups the Applicant wrote to as part of its community engagement process, and notes Gilchrist J’s comments in the *Liquorland McLaren Vale* [2022] SALC 53 decision (**Liquorland Decision**), and submits that whilst an applicant is entitled to rely on the fact that a stakeholder did not express an objection to the application, there may be reasons why a stakeholder did not respond (e.g. limited resources), and consequently, *“any positive inference which may be drawn in favour of the Applicant from non-responses should be extremely limited”* (3, pg4, Objection).

The Alma Tavern submits that:

Significantly, the Applicant received a response from Drug and Alcohol SA (as annexed to the CIAS) which identified a potential for increased harm given the proximity of the proposed premises to a drug and alcohol treatment centre which is 140 metres from the proposed premises. Drug and Alcohol SA requested this be addressed in the CIAS.

In addressing this potential for increased harm, the Applicant simply asserts that the proposed premises will not result in any additional harm to patients of the drug and alcohol treatment centre as *“...the proposed wine bar and shop are **not considered to provide a risk** to clients of the facility”* (our emphasis) (see paragraph 9.2.20 of the CIAS). The basis of this assertion is unclear.

The Alma Tavern submits that the Applicant has failed to properly consider harm minimisation measures in respect of the increased risk posed to vulnerable persons using the treatment facility, and has not provided any evidence in relation to a number of statements made in the CIR, namely:

- that persons would prefer to cross Magill Road at the traffic lights;
- that persons attending DASSA would prefer to go to a hotel for their alcohol needs;
- that persons would not attend the proposed premises due to the sophisticated offering;
- Whilst not expressly stated, the applicant infers that only those from lower socio-economic backgrounds would be clients of the treatment centre, such that clients of the treatment centre would not attend the proposed premises due to the “sophisticated offering”. No evidence is provided as to the demographics of the users of the treatment centre, or in respect of their preferences as to the style of licensed premises they prefer to frequent.

The Alma Tavern asserts that the Applicant has not given adequate consideration to the potential for increased harm arising from the proximity of the proposed offering to a drug and alcohol treatment facility, and has failed to propose adequate measures to address the risk of harm.

In relation to the survey results of the patrons of East End Cellars, the Alma Tavern submits that no community benefit can be identified from the results as the Applicant has not provided a copy of all survey questions, details of the information provided to survey participants, or details of the responses to questions, and cites *Barossa Premium Cellars* [2000] SALC 6 (17 April 2000), observing that in that case Kelly J held that survey evidence is of little real assistance in matters such as this.

The Alma Tavern points to the assertion by MasterPlan that “*I do not believe that the proposed wine bar and shop would be a congregation area for school children, nor would I consider the proposed licensed premises to represent a risk to minors in terms of exposure to liquor products*”, and asserts that in the absence of evidence, it is not clear how this conclusion has been drawn (6, pg5, Objection).

The Alma Tavern draws attention to the number of General and Hotel Licences and Packaged Liquor Sales Licences in the locality, as acknowledged by the Applicant, and submits that community interest in the grant of the application cannot be said to arise from the fulfilment of unmet demand, or lack of service.

Additionally, the Alma Tavern takes issue with the Applicant’s assertion that it will offer a different style of premises to the existing venues in the locality, and contends that when taking account of what is on offer in nearby licensed premises, “*the proposed premises is nothing more than a premises seeking to offer liquor for consumption both on and off the licensed premises in the same (or similar) way and in the same market as “traditional” hotel and bottle shops, and that the community interest needs to be considered in this context. It is our client’s position that the CIAS does not do so*” (7, pg6, Objection).

The Alma Tavern contends that the CIR contains no consideration of crime statistics, provides a summary of the crime statistics from January to March 2022, and submits that ‘offences against property’ are on average greater in the locality than the state average, and that offences against a person, threatening behaviour and abduction, harassment and other offences are also higher than the state average.

The Alma Tavern submits that in relation to the crime statistics:

While it is not evident from the statistics whether alcohol was a contributing factor to any of these offences, it is evident that the Applicant simply failed to address such an important social factor and to address what impact the proposed premises may have on the level of crime within the locality (9, pg7, Objection).

The Alma Tavern further submits that the present application should be distinguished from the decision in *Seed Deli Bistro Rooftop Clare Valley*:

The Applicant asserts that this application is no different to the premises known as Seed Deli Bistro Rooftop Clare Valley 5453 (see Seed Deli Bistro Rooftop Clare Value 5453 (29 January 2021)) in that the premises will appeal to “both locals and tourists alike”.

Our client submits this application should be distinguished from that matter as Clare Valley’s status as a tourist destination is very different to that of the Magill Road precinct. The Applicant has provided insufficient evidence in support of its assertion that Magill Road is a tourist destination (10, Objection).

Applicant’s Submissions in reply

In relation to harm minimisation matters the Applicant submits that:

The principals of the applicant company are experienced operators at East End Cellars Adelaide and elsewhere. East End Cellars has in excess of 2 decades of trading history involving both on and off premise liquor sales and consumption. There is no history of complaint or issue arising as to responsible service matters at the East End Cellars Adelaide premises (1, pg3, A2).

The Applicant submits in that accordance with the Guidelines, each application will require a separate level of detail as to community interest and harm minimisation matters, and that given the nature of this proposal, the harm minimisation aspects are more than adequate and consistent with the usual standards.

The Applicant submits that it consulted with MasterPlan and has adopted the accepted standard 2 kilometre radius for suburban Adelaide, as this is where the Applicant expects the bulk of its clientele to come from, and notes that the Alma Tavern has not proposed any alternate locality or reason not to adopt the standard 2 kilometre radius (2, pg3, A2).

The Applicant submits that it has undertaken community consultation at least consistent with, if not in excess, of other applications of this nature that have been accepted by the Authority in previous applications. The Applicant also asserts that the Alma Tavern has conceded that no other negative responses were received in response to consultation or the statutory public notification process, and that consistent with recent findings of the Licensing Court in the Liquorland Decision, that some weight can be given to the lack of any objections received in respect of the stakeholder and public consultation process.

The Applicant notes that as part of the consultation it advised DASSA directly of the application. DASSA requested a copy of the CIR, which the Applicant provided. DASSA did not object to the application, but observed that the potential of harm resulting from the proposal would need to be considered as part of the assessment of the application by the Authority.

The Applicant submits that:

We also note that this proposal is for trading hours of no later than 11am to 1am the following day for on premise consumption and 9am to 10pm for off premise consumption and a licensed capacity of 200. By way of comparison, we note that the objector the Alma Tavern is authorised to trade from 5am to 3am the following morning Monday to Friday and from 8am to midnight Sunday for on premise consumption. In addition, off premises sales are authorised from 5am to midnight Monday to Saturday and 8am to 9pm Sunday. The licensed capacity of the Alma Tavern is 1035, more than 5 times the size as proposed here.

The trading hours and capacity proposed in this application are considerably less extensive than provided at the Alma and, in our submission, less likely to give rise to any real risk of sale and consumption at dangerous levels.

We again observe that the principals of the applicant company are experienced operators in both on and off premise liquor sales and consumption in not dissimilar premises at East End Cellars Adelaide.

In our submission it is reasonable to assess this application as being low risk in terms of the potential for liquor related harm to result given the nature of the offering, higher price points and expected clientele. The trading experience at East End Cellars Adelaide has been that liquor related harm and excessive or rapid consumption has not been a significant issue of concern (4, pg3-4, A2).

In relation to trading surveys the Applicant submits that it takes no issue with the Objector's general submission that survey evidence is of limited value, but notes that such survey evidence has generally been accepted by the Authority as a part of the public consultation process.

The Applicant submits that the proposed business model will not be of special attraction to minors given the price point of the range of food and liquor on offer. The Applicant submits that families with minors will not be their target clientele, and has advised that they will not provide any "family friendly" children's meals, activities or competitions. Additionally, "*policies will be in place to prevent minors from gaining access to liquor (eg no service in school uniform, ID required where customers look under 25, no unaccompanied minors permitted on site and the like)*" (6, pg4, A2).

In reply to the Objector's submissions in relation to crime statistics for the locality, the Applicant has submitted that it agrees that such statistics can be relevant in such an application, however, submits that there is nothing in the material to indicate that the locality is likely to be susceptible to any greater risk of liquor-related crime or of crime likely to result from the grant of this new licence as sought.

The Applicant has also submitted that a balanced reading of Annexure A shows that the clear majority of offences reported are less frequent in this locality than by reference to the State average (9, pg6, A2).

In relation to the Objector's submissions about the existing offerings in the locality, the Applicant submits that:

..... the objector's submission appears to suggest that this proposal is not dissimilar from the offering at other premises in the locality. With respect, a review of the proposed on premises wine list for the East End Cellars Norwood and the wine lists submitted by the objector for the Alma Tavern and Republic Hotel reveal a significantly different offering at these premises.

The overwhelming majority of wines by the glass offered at the Alma Tavern are Australian, as well as 1 French Rose, 2 French Champagne and 1 New Zealand Sauvignon Blanc. The Republic wine list appears to be exclusively Australian by the glass.

The price of wines by the glass at the Alma Tavern appears to range from \$8 to \$13.50 and Republic from \$8.50 to \$11.

By way of comparison the wine list provided at Attachment F of the community impact submission tells a very different story.

In addition to a significant range of South Australian and interstate wines by the glass, wines from Spain, France, Italy and Portugal will be on offer. Price point for wines by the glass are listed to range from \$8.50 to \$53 per glass.

Again, no issue is taken as to the liquor provided at the Alma and Republic for consumption by the glass. It is however clear that the offering at East End Cellars Norwood as proposed is significantly different from that which is available at the objector premises and other nearby premises.

In terms of takeaway liquor this proposal in terms of retail liquor *"will focus heavily on small boutique wine producers from South Australia, Australia and across the world. The operators foresee the balance to be 50% Australia and 50% international. No cask wines will be available for purchase, nor will wines below an approximate retail price of \$20 per bottle be offered for sale. The aim is not to compete with the larger liquor and wine retail stores, which aim at offering entry level and mid-tier wines at competitive prices. Rather, the wine bar and shop will focus on a higher quality offering"* (7, pg4-5, A2).

The Applicant further submits that:

Another significant point of difference is that this venue is not proposing to install gaming machines which are a feature of the objector hotel's premises, nor will it offer big screen TV's, trivia nights or other traditional *"pub"* - like facilities. Again, indicative of a very different clientele from what this applicant is proposing to cater for (7, p5, A2).

The Applicant contends that it is clear that their proposed offering is something quite different from what is currently available in the locality, and goes on to submit that the reference to the Seed Deli Bistro Rooftop Clare Valley has been made for the same reason set out above, on the basis that the proposed business is quite different from that which is already on offer in the locality.

The Applicant submits that the demographics of the locality indicate an area of elevated socio-economic advantage and SEIFA index rankings, as is to be expected from this inner eastern suburb location (7, pg2, A2).

Staff with more detailed wine knowledge will be sourced and trained given the particular focus of the business, and the Applicant submits that it is reasonable to expect that the proposed business will be attractive to a considerable proportion of the local community and will provide a point of difference from other licensed premises nearby.

Decision

The Applicant has adopted a 2km radius as suggested by the Guidelines as the locality. I am satisfied that the Applicant has correctly identified the relevant locality, and note that the Applicant has acknowledged that it will likely draw customers 'from time to time' from further afield, which may include national and international travellers.

I have considered the Alma Tavern's submissions in light of the decisions of Gilchrist J in the *Liquorland McLaren Vale* and *Hove* decisions in relation to the experience of the proposed operators and the harm minimisation measures that will be adopted.

As noted in the CIR and the Applicant's response to the Objection, the Applicant has over 2 decades experience in the industry as the licensee of East End Cellars, which includes the management of the business, implementing relevant procedures, and staff induction and training. This alone is sufficient to distinguish the present application from *Hove*, where the applicant had no experience selling liquor. Additionally, the applicant in that case made a number of errors that the Court found concerning. The errors and omissions that in part militated against the grant of a Packaged Liquor Sales Licence in *Hove* are not present in this application. I agree with the Applicant's submissions in reply that given the nature of the proposal, the harm minimisation measures and aspects outlined by the Applicant are adequate.

The Applicant has considered and will implement several strategies to assist with harm minimisation, including ensuring that the design and layout of the premises will maximise surveillance over the premises.

I agree with the Applicant's submission that the business model and the promotion of the business will not appeal to minors given the nature of the offering and the price point.

The Applicant has undertaken community consultation with nearby community service centres, health clinics, aged care facilities and hospitals, as well as government bodies in relation to the proposal.

DASSA has drawn attention to the location of the proposed premises in relation to its treatment facility. DASSA is a state-wide health service that offers a range of treatment services for people with alcohol, tobacco and other drug issues.

The DASSA treatment facility is located within 140 metres of the proposed premises. In response to the consultation DASSA replied to the Applicant stating that:

There is a growing body of evidence linking the physical availability of alcohol to increased rates of violence and other alcohol related harm.

I accept the expert evidence from MasterPlan that the proposed offering is "*not considered to provide a risk to clients of the facility*" in relation to the DASSA treatment facility.

The proposed premises is located just outside of the Adelaide CBD on a street known for its vibrancy that offers a broad range of dining and drinking options to the public. In my view the risk of harm posed by the proposed offering is very low.

I place limited weight on the survey results provided by the Applicant, but little turns on this. The Applicant has operated a very successful business in the East End of Adelaide for a lengthy period of time and has won multiple awards in respect of same. It seems highly likely that this proposed 'sister' offering will also be successful and will further add to the vibrancy and amenity of the locality.

In my view the proposed offering is of a different nature to the current offerings available in the locality and I accept the Applicant's submissions in that regard. The proposed offering will have a strong focus on specialised liquor products, and this is evident from the training that will be provided to staff in wine appreciation.

The Objector has submitted that the unique offering as a specialist liquor merchant warrants the Applicant having specific conditions imposed in the event that the licence is granted.

I do not consider in this instance that the premises will trade in any other way than has been submitted by the Applicant. The Applicant has built and established a successful business model which it is now seeking to replicate.

The proposed premises will create employment opportunities directly through the employment of staff, and indirectly through the training of staff and purchase of South Australian produce including liquor and food products.

As pointed out by the Applicant, East End Cellars has contributed to the growth and development of the liquor industry, and this is substantiated by the many awards it has won.

I also note the Applicant's contributions to the community in the form of the annual Winter Soup Kitchen. In 2020, \$37,000 was raised for the Hutt Street Centre, which supports people facing homelessness.

The demographics of the locality and the combined SEIFA index rankings indicate an area of elevated socio-economic advantage.

The crime statistics for the locality are not of concern to me in the context of this application. Some offence categories are lower than the state average and some are higher. Overall though, in total they are lower than the state average. There is nothing in the material before me to indicate that the locality is likely to be susceptible to any greater risk of alcohol-related crime from the grant of this application as sought.

As detailed by the Applicant, the proposed premises will be located below a 7 storey residential housing development. This raises some concerns about potential noise and disturbance to the future residents of the development.

I have considered the proposed capacity of the premises being a maximum of 200 persons and note that the capacity will be subject to building consent and/or a certificate of occupancy. I have also considered the proposed trading hours for the consumption of liquor on the premises. The Applicant has sought to trade Monday to Sunday 11am to 1am the following day. Due to the location of the proposed premises, the category of licence sought by the Applicant, and the adjacent residential tenancies, I consider the trading hours for the proposed premises in relation to 'consumption on' should be reduced by an hour to Midnight, Sunday to Thursday.

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 considered the harm that might be caused (whether to a community as a whole or a group within a community) due to the excessive or inappropriate consumption of liquor and I am satisfied on the material before me that the risk of harm posed by the proposed licence is very low, particularly given the nature of the proposed business offering, the trading hours, and the significant experience of the Applicant to mitigate any potential risks.

The Act requires an evaluative exercise that involves weighing the positive aspects of a proposed application with the negative aspects in order to determine whether granting the application is in the community interest. I am of the view that the benefits to the community from the grant of this application clearly outweigh any negative community impacts, that there is very little potential for harm, and that the grant of the application is clearly in the community interest.

There is no reason why the application should be refused on the basis of the matters outlined in section 57 of the Act such as the suitability of the premises; the potential for the premises to cause undue offence, annoyance and the like to nearby workers, residents and worshipers in their vicinity (given the reduction in the hours of trade from Sunday to Thursday to midnight, as canvassed above); or prejudice to the safety or welfare of children attending nearby schools. The relevant consents and development approvals are in place to allow the Applicant to proceed to establish the proposed business at the premises.

There is no basis for refusing the application under the broad discretion available pursuant to section 53 of the Act. I am of the view that granting the application is in the public interest and will further the objects of the Act.

While I am satisfied that the grant of the application for a General and Hotel Licence is in the community interest and public interest, given the extent to which the premises are uncompleted, I instead grant the Applicant a Certificate of Approval pursuant to section 59 of the Act.

The Certificate of Approval is granted on the following conditions:

- 1) The Applicant shall notify the Authority within 7 days of any changes to the approved plans submitted with this application;
- 2) The Applicant must provide a copy of the Certificate of Occupancy to the Authority, prior to commencing trade from the premises;
- 3) On providing the Authority with a copy of the Certificate of Occupancy, the Authority will grant the Applicant a General and Hotel Licence in accordance with section 32 of the Act;
- 4) The Certificate shall lapse on 25 July 2024 if the premises are not completed by this date, or on such later date as extended by either the State Planning Commission or the Authority.

The following trading rights will be conferred if / when the Certificate converts to a General and Hotel Licence:

- 1) Sale of liquor for 'consumption on' premises:
Sunday to Thursday 11am to midnight
Friday and Saturday 11am to 1am the following day
- 2) Sale of liquor for 'consumption off' premises:
9am – 10pm, 7 days per week
- 3) The following persons are approved to occupy any position of authority in the entity holding the licence: Michael John Andrewartha (9501) and Mathieu Alain Andre Smeysters (163376).

Paul Bertram
Senior Hearings Delegate